UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

SCHEDULE TO
(RULE 14D-100)

Tender Offer Statement Pursuant to Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934
(Amendment No. 1)

MAXWELL TECHNOLOGIES, INC.
(Names of Subject Company)

CAMBRIA ACQUISITION CORP.
(Offeror)

TESLA, INC.
(Parent of Offeror)
(Names of Filing Persons)

COMMON STOCK, $0.10 PAR VALUE
(Title of Class of Securities)

577767106
(CUSIP Number of Class of Securities)

Elon Musk
Chief Executive Officer
Tesla, Inc.
3500 Deer Creek Road
Palo Alto, California 94304
(650) 681-5000

(Name, address and telephone number of person authorized to receive notices and communications on behalf of filing persons)

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with copies to:

Mark B. Baudler
Michael S. Ringler
Wilson Sonsini Goodrich & Rosati, P.C.
650 Page Mill Road
Palo Alto, California 94304
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3500 Deer Creek Road
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CALCULATION OF FILING FEE

Transaction Valuation*	Amount of Filing Fee**
$235,674,520.50	$28,563.76***

* Estimated solely for the purpose of calculating the registration fee pursuant to Rule 0-11 of the Securities Exchange Act of 1934, as amended, based on the product of (i) $4.70, the average of the high and low sales prices per share of Maxwell Technologies, Inc. common stock on February 12, 2019, as reported by the Nasdaq Global Market, and (ii) 50,143,515 (which represents the estimated maximum number of shares of Maxwell Technologies, Inc. common stock that may be exchanged in the offer and the subsequent merger described herein for the offer consideration, including (x) shares underlying Maxwell Technologies, Inc. equity awards outstanding as of February 11, 2019, and (y) shares underlying Maxwell Technologies, Inc. equity awards that are expected to be granted between February 11, 2019 and the closing of the offer and the subsequent merger described herein in accordance with the merger agreement described herein).

** The amount of the filing fee, calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, equals 0.0001212 multiplied by the proposed maximum offering price.

*** Previously paid.

☒ Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: $28,563.76	Filing Party: Tesla, Inc.
Form or Registration No.: Form S-4 333-229749	Date Filed: February 20, 2019

☐ Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

☒ third-party tender offer subject to Rule 14d-1.
☐ issuer tender offer subject to Rule 13e-4.
☐ going-private transaction subject to Rule 13e-3.
☐ amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer: ☐

This Amendment No. 1 (this “Amendment No. 1”) amends and supplements the Tender Offer Statement on Schedule TO, originally filed with the Securities and Exchange Commission (the “SEC”) on February 20, 2019 (together with any subsequent amendments and supplements thereto, the “Schedule TO”), by Tesla, Inc., a Delaware corporation (“Tesla”), and Cambria Acquisition Corp., a Delaware corporation and a direct wholly-owned subsidiary of Tesla (the “Offeror”). This Schedule TO relates to the offer by the Offeror to exchange for each outstanding share of common stock of Maxwell Technologies, Inc., a Delaware corporation (“Maxwell”), par value $0.10 per share (“Maxwell common stock” and such shares of Maxwell common stock, “Maxwell shares”), validly tendered and not validly withdrawn in the offer, for a fraction of a share of Tesla common stock, par value $0.001 per share (which we refer to as “Tesla common stock” and such shares of Tesla common stock, “Tesla shares”) equal to the quotient obtained by dividing $4.75 by the volume weighted average of the daily volume weighted average of the trading price of one (1) share of Tesla common stock as reported on the Nasdaq Global Select Market for the five (5) consecutive trading days immediately preceding the second trading day prior to the date of the expiration of the offer, subject to the minimum, together with cash in lieu of any fractional shares of Tesla common stock, without interest and less any applicable withholding taxes. In the event that the Tesla common stock price is equal to or less than $245.90, the minimum will apply and each share of Maxwell common stock validly tendered and not validly withdrawn in the offer will be exchanged for 0.0193 of a share of Tesla common stock. The foregoing consideration, the “Offer Consideration,” and such offer, on the terms and subject to the conditions and procedures set forth in the prospectus/offer to exchange, dated February 20, 2019 (the “Prospectus/Offer to Exchange”), and in the related letter of transmittal (the “Letter of Transmittal”), together with any amendments or supplements thereto, the “Offer”.

Tesla has filed with the SEC a Registration Statement on Form S-4 dated February 20, 2019, relating to the offer and sale of shares of Tesla common stock to be issued to holders of shares of Maxwell common stock validly tendered and not validly withdrawn in the Offer (the “Registration Statement”). The terms and conditions of the Offer are set forth in the Prospectus/Offer to Exchange, which is a part of the Registration Statement, and the Letter of Transmittal, which were filed as Exhibits (a)(4) and (a)(1)(A), respectively, to the Schedule TO. Pursuant to General Instruction F to Schedule TO, the information contained in the Prospectus/Offer to Exchange and the Letter of Transmittal, including any prospectus supplement or other supplement thereto related to the Offer hereafter filed with the SEC by Tesla or the Offeror, is hereby expressly incorporated into the Schedule TO by reference in response to Items 1 through 11 of the Schedule TO and is supplemented by the information specifically provided for in the Schedule TO. The Agreement and Plan of Merger, dated as of February 3, 2019, by and among Tesla, the Offeror and Maxwell, a copy of which is filed as Exhibit (d)(1) to the Schedule TO, is incorporated into the Schedule TO by reference.

All information regarding the Offer as set forth in the Schedule TO, including all exhibits and annexes thereto that were previously filed with the Schedule TO, is hereby expressly incorporated by reference into this Amendment No. 1, except that such information is hereby amended and supplemented to the extent specifically provided for herein and to the extent amended and supplemented by the exhibits filed herewith. Capitalized terms used but not defined in this Amendment No. 1 have the meanings ascribed to them in the Schedule TO.

Items 1 through 9.

On March 15, 2019, Tesla announced that it has extended the expiration of its previously announced offer to acquire each outstanding share of common stock of Maxwell Technologies, Inc. to 11:59 p.m., Eastern time, at the end of April 2, 2019, unless extended further or terminated in accordance with the merger agreement.

Items 1 through 9 of the Schedule TO are hereby amended and supplemented as set forth in the Prospectus/Offer to Exchange, which is filed as Exhibit (a)(4) hereto.

All of the information in the Prospectus/Offer to Exchange and the Letter of Transmittal, and any supplement or other amendment thereto related to the offer hereafter filed with the SEC by Tesla or the Offeror, is hereby incorporated by reference in answer to Items 1 through 9 of Schedule TO.

Item 10. ***Financial Statements.***

Item 10(a) of the Schedule TO is hereby amended and restated as follows:

(a) The information set forth in the sections of the Prospectus/Offer to Exchange entitled "*Selected Historical Consolidated Financial Data of Tesla,*" "*Selected Historical Consolidated Financial Data of Maxwell*" and "*Where to Obtain More Information*" is incorporated into this Schedule TO by reference. The audited financial statements of Tesla, Inc. as of December 31, 2018 and 2017 and for the three years ended December 31, 2018 are incorporated by reference herein to the consolidated financial statements of Tesla, Inc. included as Item 8 to Tesla, Inc.'s Annual Report on Form 10-K filed with the SEC on February 19, 2019.

(b) The information set forth in the sections of the Prospectus/Offer to Exchange entitled "*Comparative Historical and Pro Forma Per Share Data*" is incorporated into this Schedule TO by reference.

Item 11. ***Additional Information.***

On March 15, 2019, Tesla announced that it has extended the expiration of its previously announced offer to acquire each outstanding share of common stock of Maxwell Technologies, Inc. to 11:59 p.m., Eastern time, at the end of April 2, 2019, unless extended further or terminated in accordance with the merger agreement.

Item 11 of the Schedule TO is hereby amended and supplemented as set forth in the Prospectus/Offer to Exchange, which is filed as Exhibit (a)(4) hereto, and by adding a new subsection entitled "Certain Legal Proceedings" as follows:

"Certain Legal Proceedings

In connection with the merger agreement and the transactions contemplated thereby, eight purported class action lawsuits have been filed, which are attached as Exhibit (a)(5)(D), Exhibit (a)(5)(E), Exhibit (a)(5)(F), Exhibit (a)(5)(G), Exhibit (a)(5)(H), Exhibit (a)(5)(I), Exhibit (a)(5)(J) and Exhibit (a)(5)(K) to this Amendment No. 1."

All of the information in the Prospectus/Offer to Exchange and the Letter of Transmittal, and any supplement or other amendment thereto related to the offer hereafter filed with the SEC by Tesla or the Offeror, is hereby incorporated by reference in answer to Item 11 of the Schedule TO.

Item 12. ***Exhibits.***

Item 12 of the Schedule TO is hereby amended and restated as set forth below:

Exhibit No.	Description
(a)(1)(A)	Form of Letter of Transmittal (incorporated by reference to Exhibit 99.2 to Tesla, Inc.'s Registration Statement on Form S-4 filed on February 20, 2019)
(a)(1)(B)	Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees (incorporated by reference to Exhibit 99.3 to Tesla, Inc.'s Registration Statement on Form S-4 filed on February 20, 2019)
(a)(1)(C)	Form of Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees (incorporated by reference to Exhibit 99.4 to Tesla, Inc.'s Registration Statement on Form S-4 filed on February 20, 2019)
(a)(4)	Prospectus/Offer to Exchange (incorporated by reference to Amendment No. 1 to Tesla, Inc.'s Registration Statement on Form S-4 filed on March 15, 2019)
(a)(5)(A)	Form of Summary Advertisement
(a)(5)(B)	Annual Report on Form 10-K of Tesla, Inc. for the fiscal year ended December 31, 2018 (filed with the SEC on February 19, 2019 and incorporated herein by reference)
(a)(5)(C)	Press release issued by Tesla, dated March 15, 2019, relating to the extension of the offer (incorporated by reference to Tesla, Inc.'s filing pursuant to Rule 425 on March 15, 2019)
(a)(5)(D)*	Class Action Complaint filed on February 26, 2019 (Kip Leggett v. Maxwell Technologies, Inc., et al., Case No. 3:19-cv-00377)
(a)(5)(E)*	Class Action Complaint filed on February 26, 2019 (Shiva Stein v. Maxwell Technologies, Inc., et al., Case No. 3:19-cv-00395)
(a)(5)(F)*	Class Action Complaint filed on March 1, 2019 (Joel Rosenfeld IRA v. Maxwell Technologies, Inc., et al., Case No. 3:19-cv-00413)
(a)(5)(G)*	Class Action Complaint filed on March 4, 2019 (Franck Prissert v. Maxwell Technologies, Inc., et al., Case No. 3:19-cv-00429)
(a)(5)(H)*	Class Action Complaint filed on March 7, 2019 (Jonathan Mantak v. Maxwell Technologies, Inc., et. al., Case No. 3:19-cv-00451)
(a)(5)(I)*	Class Action Complaint filed on March 4, 2019 (John Solak v. Maxwell Technologies, Inc., et al., Case No. 1:19-cv-00448)
(a)(5)(J)*	Class Action Complaint filed on March 4, 2019 (Davis Rodden v. Steven Bilodeau, et al., Case No. 2019-0176)
(a)(5)(K)*	Class Action Complaint filed on February 28, 2019 (Jack Phillipps v. Maxwell Technologies, Inc., et al., Case No. 1:19-cv-01927)
(d)(1)	Agreement and Plan of Merger among Tesla, Inc., Maxwell Technologies, Inc. and the Offeror, dated as of February 3, 2019 (incorporated by reference to Exhibit 99.5 to Tesla, Inc.'s Registration Statement on Form S-4 filed on February 20, 2019)
(d)(2)	Confidentiality Agreement, dated December 14, 2018, by and between Tesla, Inc. and Maxwell Technologies, Inc. (incorporated by reference to Exhibit 99.7 to Tesla, Inc.'s Registration Statement on Form S-4 filed on February 20, 2019)
(d)(3)	Exclusivity and Non-Solicitation Agreement, dated January 22, 2019, by and between Tesla, Inc. and Maxwell Technologies, Inc. (incorporated by reference to Exhibit 99.8 to Tesla, Inc.'s Registration Statement on Form S-4 filed on February 20, 2019)
(d)(4)	Tender and Support Agreement, dated February 3, 2019, by and among the Tesla, Inc., Cambria Acquisition Corp., I2BF Energy Limited, Richard Bergman, Steven Bilodeau, Jörg Buchheim, Franz Fink, Burkhard Göschel, Ilya Golubovich, John Mutch, David Lyle and Emily Lough (incorporated by reference to Exhibit 99.6 to Tesla, Inc.'s Registration Statement on Form S-4 filed on February 20, 2019)

* Filed herewith.

SIGNATURES

After due inquiry and to the best of their knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: March 15, 2019

CAMBRIA ACQUISITION CORP.

By: /s/ Brian Scelfo
Name: Brian Scelfo
Title: President

TESLA, INC.

By: /s/ Zachary Kirkhorn
Name: Zachary Kirkhorn
Title: Chief Financial Officer

BRODSKY & SMITH, LLC
Evan J. Smith, Esquire (SBN 242352)
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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

KIP LEGGETT, on behalf of himself and all others similarly situated, Plaintiff, 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. Defendants.	:	**Civil Action No. '19CV0377 LAB JLB** **CLASS ACTION COMPLAINT FOR BREACH OF FIDUCIARY DUTIES AND VIOLATIONS OF SECTIONS 14(a) AND 20(a) OF THE SECURITIES EXCHANGE ACT OF 1934** **<u>JURY TRIAL DEMAND</u>**

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

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

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

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

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

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

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

8. In further violation of their fiduciary duties, Defendants caused to be filed the materially deficient Proxy Materials on February 20, 2019 with SEC in an effort to solicit stockholders to tender their Maxwell shares in favor of the Proposed Transaction. The Proxy Materials are materially deficient, deprives Maxwell stockholders of the information they need to make an intelligent, informed and rational decision of whether to tender their shares in favor of the Proposed Transaction, and is thus in breach of the Defendants fiduciary duties. As detailed

below, the Proxy Materials omits and/or misrepresents material information concerning, among other things: (a) the sales process and in particular certain conflicts of interest for management; (b) the financial projections for Maxwell and Tesla, provided by Maxwell and Tesla to the Company's financial advisor Barclays Capital, Inc. ("Barclays") for use in its financial analyses; and (c) the data and inputs underlying the financial valuation analyses that purport to support the fairness opinions provided by the Company's financial advisors, Barclays.

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

PARTIES

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

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

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

13. Defendant Steve Bilodeau ("Bilodeau") has been a director of the Company at all relevant times. In addition, Bilodeau serves as the Chairman of the Company Board and as a

member on the Board's Audit, Strategic Alliance, and Compensation Committees, and as the Chair of the Board's Governance & Nominating Committee. In addition, Biolodeau is classified by the Company as a "Financial Expert".

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

23. Personal jurisdiction exists over each defendant either because the defendant conducts business in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over defendant by this Court permissible under traditional notions of fair play and substantial justice.

24. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because Maxwell has its principal place of business is located in this District, and each of the Individual Defendants, as Company officers or directors, has extensive contacts within this District.

CLASS ACTION ALLEGATIONS

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

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

a. The Class is so numerous that joinder of all members is impracticable. As of February 11, 2019, there were over 46 million shares of Maxwell Common Stock were issued and outstanding. The actual number of public stockholders of Maxwell will be ascertained through discovery;

b. There are questions of law and fact which are common to the Class, including *inter alia*, the following:

i. Whether Defendants have violated the federal securities laws;

ii. Whether Defendants made material misrepresentations and/or omitted material facts in the Proxy Materials; and

iii. Whether Plaintiff and the other members of the Class have and will continue to suffer irreparable injury if the Proposed Transaction is consummated.

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

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

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

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

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

THE INDIVIDUAL DEFENDANTS' FIDUCAIRY DUTIES

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

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

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

a. act with the requisite diligence and due care that is reasonable under the circumstances;

b. act in the best interest of the company;

c. use reasonable means to obtain material information relating to a given action or decision;

d. refrain from acts involving conflicts of interest between the fulfillment of their roles in the company and the fulfillment of any other roles or their personal affairs;

e. avoid competing against the company or exploiting any business opportunities of the company for their own benefit, or the benefit of others; and

f. disclose to the Company all information and documents relating to the company's affairs that they received by virtue of their positions in the company.

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

a. participating in any transaction where the directors' or officers' loyalties are divided;

b. participating in any transaction where the directors or officers are entitled to receive personal financial benefit not equally shared by the Company or its public stockholders; and/or

c. unjustly enriching themselves at the expense or to the detriment of the Company or its stockholders.

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

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

SUBSTANTIVE ALLEGATIONS

Company Background

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

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

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

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

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

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

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

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

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

The Flawed Sales Process

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

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

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

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

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

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

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

The Proposed Transaction

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

> **San Diego (February 4, 2019)**—Maxwell Technologies, Inc. (Nasdaq: MXWL or the “Company” or “Maxwell”), a leading developer and manufacturer of energy solutions, today announced it has entered into a definitive agreement (the “Merger Agreement”) to be acquired by Tesla, Inc. (Nasdaq: TSLA or “Tesla”). Tesla will commence an all stock exchange offer for all the issued and outstanding shares of the Company (the “Offer”), after which the Company will be merged with a Tesla subsidiary and become a wholly owned subsidiary of Tesla.
>
> 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 common stock as reported on the NASDAQ Global Select Market for the five consecutive trading days preceding the expiration of the Offer, and which is subject to a floor that has been set at 80% of a volume weighted average price of Tesla common stock calculated prior to signing.

The closing of the transaction is subject to the successful tender and exchange of shares, certain regulatory approvals and customary closing conditions. These terms, along with additional terms and conditions of the transaction, can be found 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.

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

The Merger Agreement and the consummation of the Offer, merger and other transactions contemplated in the Merger Agreement have been unanimously approved by Maxwell's board of directors, all of whom recommend to the Company's stockholders that they accept the Offer and tender their Maxwell 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.

"We are very excited with today's announcement that Tesla has agreed to acquire Maxwell. Tesla is a well-respected and world-class innovator that shares a common goal of building a more sustainable future," said Dr. Franz Fink, President and Chief Executive Officer of Maxwell. "We believe this transaction 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."

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

The Inadequate Merger Consideration

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

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

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

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

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

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

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

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

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

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

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

Preclusive Deal Mechanisms

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

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

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

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

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

Potential Conflicts of Interest

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

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

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

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

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

The Materially Misleading and/or Incomplete Proxy Materials

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

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

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

a. The nature of any specific standstill restrictions arising out of the terms of any of the non-disclosure agreements entered into between Maxwell on the one hand and any interested third party, including tesla, on the other, and if the terms of any included "don't-ask, don't-waive" provisions or standstill provisions in any such agreements, and if so, the specific conditions, if any, under which such provisions would fall away;

b. The nature of any differences that exist between the various non-disclosure agreements entered into between Maxwell and any interested third parties

c. The reasoning as to why the committee of independent board members created to run the sales process was not created until after Tesla had supplied two rounds of bids to purchase the Company;

d. The reasoning as to why a market check was not carried out until after Tesla had supplied two rounds of bids to purchase the Company;

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

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

Omissions and/or Material Misrepresentations Concerning Maxwell's Financial Projections

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

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

a. EBIT;

b. Adj EBITDA; and

c. Adj EBITEDA-Capital Expenditures; and

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

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

a. Adj EBITDA; and

b. EBIT.

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

81. In addition the Proxy Materials indicate that the Extended Projections for the years

2024 and 2025 were created by Barclays taking into "account recent developments, including the removal of any potential revenue based on a potential commercial arrangement with Tesla while adding forecasted amounts for potential alternative automotive manufacturers;" however, the Projections do not disclose the specific amount of potential revenue from Tesla removed, or the amount of revenue from potential alternative manufacturers included.

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

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

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

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

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

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

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

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

a. The specific benchmark multiples for each Comparable Company;

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

a. The total value of each selected transaction;

b. The specific date on which each selected transaction closed;

c. The specific benchmark multiples for each transaction;

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

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

i. Maxwell's weighted average cost of capital.

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

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

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

FIRST COUNT

Claim for Breach of Fiduciary Duties

(Against the Individual Defendants)

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

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

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

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

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

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

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

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

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

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

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

SECOND COUNT

Aiding and Abetting the Board's Breaches of Fiduciary Duty

Against Defendants Maxwell Technologies, Inc.,

Tesla, Inc., and Cabria Acquisition Corp.

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

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

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

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

THIRD COUNT

Violations of Section 14(a) of the Exchange Act

(Against All Defendants)

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

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

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

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

110. As such, SEC Rule 14a-9, 17 C.F.R. 240.14a-9, states the following

> No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

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

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

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

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

FOURTH COUNT

Violations of Section 20(a) of the Exchange Act

(Against All Individual Defendants)

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

116. The Individual Defendants were privy to non-public information concerning the Company and its business and operations via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and Board meetings and committees thereof and via reports and other information provided to them in connection therewith. Because of their possession of such information, the Individual Defendants knew or should have known that the Proxy Materials were materially misleading to Company stockholders.

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

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

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

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

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

B. Enjoining the Proposed Transaction;

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

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

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

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

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

H. Granting such other and further relief as this Court may deem just and proper.

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*

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Attorneys for Plaintiff

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 Plaintiffs 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. Plaintiffs 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):

DATE	# OF SHARES PURCHASED	# OF SHARES SOLD	PRICE
June/July 2014	1000	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: /s/ Kip Leggett
Print Name: Kip Leggett
Address: 677 Via La Cuesta
State, Zip Code: Chula Vista, CA 91913

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SHIVA STEIN, Plaintiff, v. MAXWELL TECHNOLOGIES, INC., RICHARD BERGMAN, STEVE BILODEAU, JORG BUCHHEIM, FRANZ J. FINK, BURKHARD GOESCHEL, ILYA GOLUBOVICH, and JOHN MUTCH, Defendants.	Case No. **'19CV395 LAB RBB** **COMPLAINT FOR VIOLATIONS OF SECTIONS 14(e), 14(d) AND 20(a) OF THE SECURITIES EXCHANGE ACT OF 1934** DEMAND FOR JURY TRIAL

Plaintiff Shiva Stein ("Plaintiff") alleges the following upon information and belief, including investigation of counsel and review of publicly-available information, except as to those allegations pertaining to Plaintiff, which are alleged upon personal knowledge:

INTRODUCTION

1. This is an action brought by Plaintiff against Maxwell Technologies, Inc. ("Maxwell or the "Company"), the members of Maxwell's board of directors (the "Board" or the "Individual Defendants" and collectively with the Company, the "Defendants") for their violations of Sections 14(e), 14(d), and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") in connection with the proposed acquisition of Maxwell by Tesla Inc. and its affiliates ("Tesla").

2. Defendants have violated the above-referenced Sections of the Exchange Act by causing a materially incomplete and misleading Solicitation Statement (the "Solicitation Statement" or the "14D-9") to be filed on February 20, 2019 with the United States Securities and Exchange Commission ("SEC") and disseminated to Company stockholders. The Solicitation Statement recommends that Company stockholders tender their shares in support of a proposed transaction whereby Cambria Acquisition Corporation ("Merger Sub"), a Delaware Corporation and a wholly owned subsidiary of Tesla, will merge with and into Maxwell with Maxwell surviving the merger as a wholly owned subsidiary of Tesla (the "Proposed Transaction"). Pursuant to the terms of the definitive agreement and plan of merger the companies entered into (the "Merger Agreement"), Merger Sub has commenced a tender offer (the "Tender Offer") to acquire all of Maxwell's outstanding common stock for the quotient obtained by dividing $4.75 by the volume weighted average of the daily volume weighted average of the trading price of one share of Tesla common stock as reported on the Nasdaq Global Select Market for the five consecutive trading days ending on and including the second trading day preceding the expiration of the Tender Offer. Should the share price of Tesla equal to or become less than $245.90, then the minimum consideration of .0193 of a Tesla share will be provided for each share of the Company. The Tender Offer will expire on March 19, 2019.

3. As described herein, the Merger Consideration drastically undervalues Maxwell's stock and the consideration Maxwell's stockholders stand to receive in connection with the Proposed Transaction, and the process by which Defendants propose to consummate the Proposed Transaction is fundamentally unfair to Plaintiff and the other common stockholders of the Company. Defendants have now asked Maxwell's stockholders to support the Proposed Transaction in exchange for inadequate consideration based upon the materially incomplete and misleading representations and information contained in the Solicitation Statement, specifically, among other things, (i) Maxwell's financial projections, relied upon by the Company's financial advisor, Barclays Capital Inc. ("Barclays") in its financial analysis; and (ii) the data and inputs underlying the financial valuation analyses that support the fairness opinion provided by Barclays. The failure to adequately disclose such material information constitutes a violation of Sections 14(e), 14(d) and 20(a) of the Exchange Act as Maxwell stockholders need such information in order to decide whether to tender their shares.

4. It is therefore imperative that the material information that has been omitted from the Solicitation Statement is disclosed to the Company's stockholders prior to the expiration of the tender offer.

5. For these reasons and as set forth in detail herein, Plaintiff seeks to enjoin Defendants from taking any steps to consummate the Proposed Transaction unless and until the material information discussed below is disclosed to Maxwell's stockholders or, in the event the Proposed Transaction is consummated, to recover damages resulting from the Defendants' violations of the Exchange Act.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction), as Plaintiff alleges violations of Sections 14(e), 14(d) and 20(a) of the Exchange Act and SEC Rule 14d-9.

7. Personal jurisdiction exists over each Defendant either because the Defendant is headquartered in this District, or because Defendant is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over defendant by this Court permissible under traditional notions of fair play and substantial justice.

8. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because Maxwell is headquartered in this District.

PARTIES

9. Plaintiff is, and has been at all relevant times, the owner of Maxwell common stock and has held such stock since prior to the wrongs complained of herein.

10. Individual Defendant Richard Bergman has served as a member of the Board since May 2015.

11. Individual Defendant Steve Bilodeau has served as a member of the Board since May 2016. Bilodeau is also the Chairman of the Board.

12. Individual Defendant Jorg Buchheim has served as a member of the Board since July 2016.

13. Individual Defendant Franz J. Fink has served as a member of the Board since May 2014. Dr. Fink has also been the Company's Chief Executive Officer and President since May 1, 2014.

14. Individual Defendant Burkhard Goeschel, Ph.D. has served as a member of the Board since February 2007.

15. Individual Defendant Ilya Golubovich has served as a member of the Board since May 2017.

16. Individual Defendant John Mutch has served as a member of the Board since April 2017.

17. Defendant Maxwell is incorporated in Delaware and maintains its principal offices at 388 Calle Fortunada, San Diego, CA 92123. The Company's common stock trades on the NASDAQ Stock Exchange under the symbol "MXWL."

18. The defendants identified in paragraphs 10-16 are collectively referred to as the "Individual Defendants" or the "Board."

19. The defendants identified in paragraphs 10-17 are collectively referred to as the "Defendants."

SUBSTANTIVE ALLEGATIONS

A. The Proposed Transaction Undervalues Maxwell

20. Maxwell develops, manufactures, and markets energy storage and power delivery products. The Company's products are focused on transportation, grid energy, wind energy, and industrial applications.

21. On February 4, 2019, the Company announced the Proposed Transaction:

> SAN DIEGO, Feb. 4, 2019 /PRNewswire/ — Maxwell Technologies, Inc. (Nasdaq: MXWL or the "Company" or "Maxwell"), a leading developer and manufacturer of energy solutions, today announced it has entered into a definitive agreement (the "Merger Agreement") to be acquired by Tesla, Inc. (Nasdaq: TSLA or "Tesla"). Tesla will commence an all stock exchange offer for all the issued and outstanding shares of the Company (the "Offer"), after which the

Company will be merged with a Tesla subsidiary and become a wholly owned subsidiary of Tesla.

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

The closing of the transaction is subject to the successful tender and exchange of shares, certain regulatory approvals and customary closing conditions. These terms, along with additional terms and conditions of the transaction, can be found 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.

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

The Merger Agreement and the consummation of the Offer, merger and other transactions contemplated in the Merger Agreement have been unanimously approved by Maxwell's board of directors, all of whom recommend to the Company's stockholders that they accept the Offer and tender their Maxwell 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.

"We are very excited with today's announcement that Tesla has agreed to acquire Maxwell. Tesla is a well-respected and world-class innovator that shares a common goal of building a more sustainable future," said Dr. Franz Fink, President and Chief Executive Officer of Maxwell. "We believe this transaction 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."

Press Release, Maxwell Technologies, Inc., Maxwell Technologies Announces Definitive Merger Agreement with Tesla, Inc. (Feb. 4, 2019).

22. The Merger Consideration undervalues the Company's shares in light of its prospects for future growth. While the Company has encountered significant headwinds as it undergoes research and development, according to its financial statement it has developed and transformed its patented, proprietary and fundamental dry electrode manufacturing technology that was historically used to make ultracapacitors (batteries that have a high density with extremely long operational life and the ability to charge and discharge quickly) to create a breakthrough technology that can be applied to the manufacturing of batteries. This breakthrough technology, "dry battery electrode technology," is believed to create significant performance and cost benefits as compared to today's state of the art lithium-ion batteries. As noted by the Company, "Our dry battery electrode technology has the potential to be a groundbreaking technology within the battery industry with a substantial market opportunity, particularly for use in electric vehicles."

23. Indeed, starting in 2015 the Company undertook a series of initiatives to position itself for accelerated profitable growth for its stockholders. At the beginning of 2019, the Company is now poised to do so having announced many new partnerships in 2018. For example, in 2018 the Company announced a technology partnership with Zhejiang Geely Holding Group ("Geely"), the parent company of leading brands such as Volvo and Geely Auto, which focused on the

integration of state-of-the-art ultracapacitors and advanced power conversion electronics into Geely's global automotive vehicle lineup in support of its fleet electrification strategy, beginning with the inclusion of Maxwell's ultracapacitor-based peak power subsystem in five model year 2020 mild-hybrid and plug-in hybrid vehicles. This Geely-Volvo alliance represents greater than a $100 million market opportunity for the Company and is on top of 14 other confirmed automotive design wins at various stages of progress and in several different applications including Start/Stop, eActive Suspension, eTurbo and Back-up Power for Autonomous Driving. The Company has also disclosed that it has discussed several additional larger opportunities that could provide for considerable volume and drive material revenue growth in 2020 and beyond. The Company is similarly poised for growth in the grid energy market, the rail market, and wind markets.

24. Accordingly, the Company is well-positioned for financial growth, and the Merger Consideration fails to adequately compensate Company stockholders by limiting their ability to benefit from the Company's continued growth.

25. Despite the inadequate Merger Consideration, the Board has agreed to the Proposed Transaction. It is therefore imperative that Maxwell's stockholders are provided with the material information that has been omitted from the Solicitation Statement, so that they can meaningfully assess whether or not it is in their best interests to tender their shares in the Proposed Transaction.

B. The Background of the Merger

26. In mid-2018, Tesla and Maxwell began a series of discussions in connection with a potential strategic commercial relationship, during which the companies explored various ways in which the two could collaborate in order to further shared business objectives.

27. In September 2018, the Board discussed its ongoing strategic plan with its external advisor, and began a process to evaluate potential strategic partnerships, and the sale of its subsidiary related to its high-voltage product line.

28. In October 2018, the Company received a non-binding confirmatory offer from Renaissance Management for its high-voltage product line subsidiary. Negotiations and definitive deal documents were drawn through December 2018.

29. In December 2018, Tesla contacted Dr. Fink to convey its interest in a potential acquisition of the Company rather than a strategic commercial relationship. This information was conveyed to the Board, and the Board allowed for the acquisition to be pursued.

30. During December 2018, Dr. Fink and Tesla negotiated the consideration for Company stockholders that would result from an acquisition by Tesla.

31. By January 18, 2019, the parties had come to an agreement in principle as to the consideration for the proposed transaction. Due diligence followed and on February 3, 2018, the Board voted in favor of the Proposed Transaction.

C. The Materially Incomplete and Misleading Solicitation Statement

32. On February 20, 2019, Maxwell filed the 14D-9 with the SEC in connection with the Proposed Transaction. The 14D-9 was furnished to the Company's stockholders and solicits the stockholders to tender their shares in support of the Proposed Transaction. The Individual Defendants were obligated to carefully review the Solicitation Statement before it was filed with the SEC and disseminated to the Company's stockholders to ensure that it did not contain any material misrepresentations or omissions. However, the Solicitation Statement misrepresents and/or omits material information that is necessary for the Company's stockholders to make an informed decision concerning whether to tender their shares, in violation of Sections 14(e), 14(d), and 20(a) of the Exchange Act.

33. With respect to the financial projections disclosed in the Solicitation Statement, the Solicitation Statement fails to provide material information.

34. For the Company Projected Financial Information (the "Projections"), for the years 2019-2023, the Solicitation Statement provides values for non-GAAP (Generally Accepted Accounting Principles) financial metrics such as: (1) EBIT, (2) Adjusted EBITDA, and (3) Adjusted EBITDA less Capital Expenditures but fails to provide the line items used to calculate the metrics. *See* Solicitation Statement at 31.

35. For the Company Projections for the years 2023-2024, the Solicitation Statement provides values for non-GAAP financial metrics such as Adjusted EBITDA and EBIT but fails to provide the line items used to calculate the metrics. *See* Solicitation Statement at 32.

36. When a company discloses non-GAAP financial measures in a Solicitation Statement that were relied on by a board of directors to recommend that stockholders exercise their corporate suffrage rights in a particular manner, the company must, pursuant to SEC regulatory mandates, also disclose all projections and information necessary to make the non-GAAP measures not misleading, and must provide a reconciliation (by schedule or other clearly understandable method) of the differences between the non-GAAP financial measure disclosed or released with the most comparable financial measure or measures calculated and presented in accordance with GAAP. 17 C.F.R. § 244.100.

37. The SEC has noted that:

> [C]ompanies should be aware that this measure does not have a uniform definition and its title does not describe how it is calculated. Accordingly, a clear description of how this measure is calculated, as well as the necessary reconciliation, should accompany the measure where it is used. Companies should also avoid inappropriate or potentially misleading inferences about its usefulness. For example, "free cash flow" should not be used in a manner that inappropriately implies that the measure represents the residual cash flow available for discretionary expenditures, since many companies have mandatory debt service requirements or other non-discretionary expenditures that are not deducted from the measure.[1]

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1 *Non-GAAP Financial Measures*, U.S. SECURITIES AND EXCHANGE COMMISSION (Apr. 4, 2018), available at: https://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm

38. Thus, to cure the materially misleading nature of the forecasts as a result of the omitted information in the Solicitation Statement, Defendants must provide a reconciliation table of the non-GAAP measures to the most comparable GAAP measures. At the very least, the Company must disclose the line item forecasts for the financial metrics that were used to calculate the aforementioned non-GAAP measures. Such forecasts are necessary to make the non-GAAP forecasts included in the Solicitation Statement not misleading.

39. With respect to Barclays' *Selected Comparable Company Analysis*, the Solicitation Statement fails to disclose the individual multiples and financial metrics for the companies observed by Barclays in the analysis.

40. With respect to Barclays' *Selected Precedent Transaction Analysis*, the Solicitation Statement fails to disclose the individual multiples and financial metrics for the companies observed by Barclays in the analysis.

41. With respect to Barclays' *Discounted Cash Flow Analysis*, the Solicitation Statement fails to disclose the following key components used in the analysis: (i) the terminal value of the Company; (ii) the inputs and assumptions underlying the selection of the discount rate range of 14.0%-18.0%, (iii) the estimated net debt of the Company; (iv) fully diluted number of shares of the Company; and (v) the number of Company shares, options to purchase Company shares and Company restricted units outstanding as of January 31, 2019.

42. With respect to the *Historical Share Price Analysis*, and the *Transactional Premium Analysis*, it is unclear whether these analyses were presented to the Board by Barclays in support of its fairness opinion.

43. In sum, the omission of the above-referenced information renders statements in the Solicitation Statement materially incomplete and misleading in contravention of the Exchange Act. Absent disclosure of the foregoing material information prior to the expiration of the Tender Offer, Plaintiff will be unable to make a fully informed decision regarding whether to tender their shares, and they are thus threatened with irreparable harm, warranting the injunctive relief sought herein.

CLAIMS FOR RELIEF

COUNT I

On Behalf of Plaintiff Against All Defendants for Violations of Section 14(e) of the Exchange Act

44. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

45. Section 14(e) of the Exchange Act provides that it is unlawful "for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading . . . ." 15 U.S.C. § 78n(e).

46. As set forth above, Defendants filed and delivered the Solicitation Statement to the Company's stockholders, which Defendants knew, or recklessly disregarded, that it contained material omissions and misstatements described herein.

47. Defendants violated Section 14(e) of the Exchange Act by issuing the Solicitation Statement in which they made untrue statements of material facts or failed to state all material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in conjunction with the Tender Offer. Defendants knew, or recklessly disregarded, that the Solicitation Statement failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

48. The Solicitation Statement was prepared, reviewed and/or disseminated by Defendants. It misrepresented and/or omitted material facts, including material information about the consideration offered to stockholders via the Tender Offer, the intrinsic value of the Company, the Company's financial projections, and the financial advisor's valuation analyses and resultant fairness opinion.

49. In so doing, Defendants made untrue statements of material fact and omitted material information necessary to make the statements that were made not misleading in violation of Section 14(e) of the Exchange Act. By virtue of their positions within the Company and/or roles in the process and in the preparation of the Solicitation Statement, Defendants were aware of this information and their obligation to disclose this information in the Solicitation Statement.

50. The omissions and misleading statements in the Solicitation Statement are material in that a reasonable stockholder would consider them important in deciding whether to tender their shares or seek appraisal. In addition, a reasonable investor would view the information identified above which has been omitted from the Solicitation Statement as altering the "total mix" of information made available to stockholders.

51. Defendants knowingly, or with deliberate recklessness, omitted the material information identified above from the Solicitation Statement, causing certain statements therein to be materially incomplete and therefore misleading. Indeed, while Defendants undoubtedly had access to and/or reviewed the omitted material information in connection with approving the Tender Offer, they allowed it to be omitted from the Solicitation Statement, rendering certain portions of the Solicitation Statement materially incomplete and therefore misleading.

52. The misrepresentations and omissions in the Solicitation Statement are material to Plaintiff, and Plaintiff will be deprived of his entitlement to make a fully informed decision if such misrepresentations and omissions are not corrected prior to the expiration of the Tender Offer.

COUNT II
Violations of Section 14(d)(4) of the Exchange Act and
Rule 14d-9 Promulgated Thereunder
(Against All Defendants)

53. Plaintiff repeats and re-alleges each allegation set forth above as if fully set forth herein.

54. Defendants have caused the Solicitation Statement to be issued with the intention of soliciting stockholder support of the Tender Offer.

55. Section 14(d)(4) of the Exchange Act and SEC Rule 14d-9 promulgated thereunder require full and complete disclosure in connection with tender offers.

56. The Solicitation Statement violates Section 14(d)(4) and Rule 14d-9 because it omits material facts, including those set forth above, which render the Solicitation Statement false and/or misleading.

57. Defendants knowingly, or with deliberate recklessness, omitted the material information identified above from the Solicitation Statement, causing certain statements therein to be materially incomplete and therefore misleading. Indeed, while Defendants undoubtedly had access to and/or reviewed the omitted material information in connection with approving the Tender Offer, they allowed it to be omitted from the Solicitation Statement, rendering certain portions of the Solicitation Statement materially incomplete and therefore misleading.

58. The misrepresentations and omissions in the Solicitation Statement are material to Plaintiff and Plaintiff will be deprived of his entitlement to make a fully informed decision if such misrepresentations and omissions are not corrected prior to the expiration of the Tender Offer.

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

59. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

60. The Individual Defendants acted as controlling persons of Maxwell within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as directors of Maxwell, and participation in and/or awareness of the Company's operations and/or intimate knowledge of the incomplete and misleading statements contained in the Solicitation Statement filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of Maxwell, including the content and dissemination of the various statements that Plaintiff contends are materially incomplete and misleading.

61. Each of the Individual Defendants was provided with or had unlimited access to copies of the Solicitation Statement and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

62. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of Maxwell, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the Exchange Act violations alleged herein, and exercised the same. The omitted information identified above was reviewed by the Board prior to voting on the Proposed Transaction. The Solicitation Statement at issue contains the unanimous recommendation of the Board to approve the Proposed Transaction. The Individual Defendants were thus directly involved in the making of the Solicitation Statement.

63. In addition, as the Solicitation Statement sets forth at length, and as described herein, the Individual Defendants were involved in negotiating, reviewing, and approving the Merger Agreement. The Solicitation Statement purports to describe the various issues and information that the Individual Defendants reviewed and considered. The Individual Defendants participated in drafting and/or gave their input on the content of those descriptions.

64. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

65. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Individual Defendants' conduct, Plaintiff will be irreparably harmed.

66. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands injunctive relief in his favor and against the Defendants jointly and severally, as follows:

A. Preliminarily and permanently enjoining Defendants and their counsel, agents, employees and all persons acting under, in concert with, or for them, from proceeding with, consummating, or closing the Proposed Transaction, unless and until Defendants disclose the material information identified above which has been omitted from the Solicitation Statement;

A. Rescinding, to the extent already implemented, the Merger Agreement or any of the terms thereof, or granting Plaintiff rescissory damages;

B. Directing Defendants to account to Plaintiff for all damages suffered as a result of their wrongdoing;

C. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and expert fees and expenses; and

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

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

DATED: February 26, 2019

WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP

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Exhibit (a)(5)(F)

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[Additional counsel appear on signature page]

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOEL ROSENFELD IRA, Plaintiff, v. MAXWELL TECHNOLOGIES, INC., RICHARD BERGMAN, STEVE BILODEAU, JÖRG BUCHHEIM, FRANZ J. FINK, BURKHARD GOESCHEL, ILYA GOLUBOVICH, and JOHN MUTCH, Defendants.	Case No. **'19CV0413 LAB AGS** JURY TRIAL DEMANDED

Plaintiff Joel Rosenfeld IRA ("Plaintiff"), by and through its undersigned counsel, for its complaint against defendants, alleges upon personal knowledge with respect to itself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This action is brought by Plaintiff against Maxwell Technologies, Inc. ("Maxwell" or the "Company") and the members of its Board of Directors (the "Board" or the "Individual Defendants") for their violations of Sections 14(e) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78n(e) and 78t(a) and to enjoin the expiration of a tender offer (the "Tender Offer") on a proposed transaction, pursuant to which Maxwell will be acquired by Tesla, Inc. ("Tesla") through its wholly owned subsidiary Cambria Acquisition Corp. ("Offeror") (the "Proposed Transaction").

2. On February 4, 2019, Maxwell issued a press release announcing that it had entered into an Agreement and Plan of Merger (the "Merger Agreement") to sell Maxwell to Tesla. Pursuant to the terms of the Merger Agreement, on February 20, 2019, Offeror commenced the Tender Offer to purchase all outstanding shares of Maxwell for $4.75 per share of Maxwell common stock (the "Offer Price"). Pursuant to the Tender 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 common stock as reported on the Nasdaq Global Select Market for the five consecutive trading days preceding the expiration of the Tender Offer, and which is subject to a floor that has been set at 80% of a volume weighted average price of Tesla common stock calculated prior to signing. The Tender Offer is scheduled to expire at 11:59 p.m., Eastern Time, on March 19, 2019.

3. On February 20, 2019, defendants filed a Solicitation/Recommendation Statement on Schedule 14D-9 (the "Recommendation Statement") with the U.S. Securities and Exchange Commission ("SEC"). The Recommendation Statement, which recommends that Maxwell stockholders tender their shares in favor of the Proposed Transaction, omits or misrepresents material information concerning, among other things: (i) Maxwell management's financial

projections; (ii) potential conflicts of interest faced by the Company's financial advisor, Barclays Capital Inc. ("Barclays"), and Company insiders; and (iii) the data and inputs underlying the financial valuation analyses that support the fairness opinion provided by Barclays. The failure to adequately disclose such material information constitutes a violation of Sections 14(e) and 20(a) of the Exchange Act as Maxwell stockholders need such information in order to make a fully informed decision whether to tender their shares in support of the Proposed Transaction.

4. In short, the Proposed Transaction will unlawfully divest Maxwell's public stockholders of the Company's valuable assets without fully disclosing all material information concerning the Proposed Transaction to Company stockholders. To remedy defendants' Exchange Act violations, Plaintiff seeks to enjoin the expiration of the Tender Offer unless and until such problems are remedied.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the claims asserted herein for violations of Sections 14(e) and 20(a) of the Exchange Act promulgated thereunder pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. §1331 (federal question jurisdiction).

6. This Court has jurisdiction over defendants because each defendant is either a corporation that conducts business in and maintains operations in this District, or is an individual who has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Plaintiff's claims arose in this District, where a substantial portion of the actionable conduct took place, where most of the documents are electronically stored, and where the evidence exists. Maxwell is incorporated in Delaware and is headquartered in this District. Moreover, each of the Individual Defendants, as Company officers or directors, either resides in this District or has extensive contacts within this District.

THE PARTIES

8. Plaintiff is, and has been at all times relevant hereto, a continuous stockholder of Maxwell.

9. Defendant Maxwell is a Delaware corporation and maintains its principal executive offices at 3888 Calle Fortunada, San Diego, California 92123. Maxwell's common stock is traded on the Nasdaq Global Select Market under the ticker symbol "MXWL."

10. Defendant Richard Bergman ("Bergman") has been a director of Maxwell since May 2015.

11. Defendant Steve Bilodeau ("Bilodeau") has been a director of Maxwell since May 2016 and Chairman of the Board effective as of Maxwell's 2017 Annual Shareholder Meeting.

12. Defendant Jörg Buchheim ("Buchheim") has been a director of Maxwell since July 2016.

13. Defendant Franz J. Fink ("Fink") has been President, Chief Executive Officer ("CEO") and a director of Maxwell since May 2014.

14. Defendant Burkhard Goeschel ("Goeschel") has been a director of Maxwell since February 2007.

15. Defendant Ilya Golubovich ("Golubovich") has been a director of Maxwell since May 2017.

16. Defendant John Mutch ("Mutch") has been a director of Maxwell since April 2017.

17. Defendants Bergman, Bilodeau, Bucheim, Fink, Goeschel, Golubovich and Mutch are collectively referred to herein as the "Board" or the "Individual Defendants."

OTHER RELEVANT ENTITIES

18. Tesla is a Delaware corporation and maintains its principal executive offices at 3500 Deer Creek Road, Palo Alto, California 94304. Tesla's common stock is traded on the Nasdaq Global Select Market under the ticker symbol "TSLA."

19. Offeror is a Delaware corporation and a wholly-owned subsidiary of Tesla.

SUBSTANTIVE ALLEGATIONS

Company Background

20. For over 50 years, Maxwell, originally named Maxwell Laboratories, Inc., has been developing, manufacturing and marketing energy storage and power delivery products for automotive, heavy transportation, renewable energy, backup power, wireless communications and industrial and consumer electronics applications. Maxwell markets its products on a global scale and maintains design, sales and manufacturing locations in the United States, Germany, China and South Korea.

21. Maxwell focuses primarily on two product lines: manufacturing and marketing ultracapacitor devices for energy storage and developing its dry battery electrode technology.

22. Maxwell's ultracapacitor products are energy storage devices that possess a unique combination of high power density, extremely long operational life and the ability to charge and discharge very rapidly. Maxwell's ultracapacitor cells, multi-cell packs, modules and subsystems provide highly reliable energy storage and power delivery solutions for applications in multiple industries, including automotive, grid energy storage, wind, bus, industrial and truck. Building on the power characteristics of its ultracapacitor energy storage devices, Maxwell also manufactures lithium-ion capacitors which have enhanced energy storage capabilities and are uniquely designed to address a variety of applications in the rail, grid, and industrial markets where energy density and weight are differentiating factors.

23. With respect to dry battery electrode technology, Maxwell has developed and transformed its patented, proprietary and fundamental dry electrode manufacturing technology Maxwell has historically used to make ultracapacitors to create a technology that can be applied to the manufacturing of batteries, particularly for use in electric vehicles. As set forth in its Annual Report for the fiscal year ended December 31, 2018 filed on Form 10-K with the SEC on February 14, 2018 ("Annual Report"), Maxwell believes that improved lithium-ion batteries are the key enabling technology for vehicle electrification, and as such, cost reduction and performance improvement have become critical targets for the world's leading lithium-ion battery manufacturers and automotive original equipment manufacturers ("OEMs") and that through its dry battery electrode technology can successfully address the need to improve energy density, extend battery life and improve durability, leading to significant cost reductions and production capacity density increases and addressing customers' demands for more environmentally-responsible solutions.

24. Maxwell continually seeks to diversify and grow its energy storage portfolio. In 2017, Maxwell acquired Nesscap Energy, Inc. ("Nesscap"), to combine Nesscap's best-in-class small cell product portfolio with Maxwell's leadership in large cell solutions to create the most complete portfolio available in the market for its customers.

25. Further according to Maxwell's Annual Report, the Company has engaged in important partnerships and business opportunities, including in the automotive market, which Maxwell sees as having the largest growth potential for the Company as the need for high power and rapid response energy storage and power delivery solutions increase with the spread of hybrid electric vehicles and autonomous driving. For example, in 2018, Maxwell partnered with Zhejiang Geely Holding Corp. ("Geely"), the parent company for brands such as Volvo and Geely Auto, which focuses on integration of state-of-the-art ultracapacitors and advanced power conversion electronics into its global automotive vehicle lineup in support of their fleet electrification strategy.

Geely will include Maxwell's ultracapacitor-based peak power system into its five model year 2020 mild-hybrid and plug-in hybrid vehicles.

26. According to the Annual Report, Maxwell has also positioned itself for growth in the grid energy storage, light rail infrastructure and wind markets. In the grid energy storage market, Maxwell has experienced increased customer levels and in 2018 engaged in a subsystem design-in with Siemens Transmission Solutions to deliver economical, fast responding, long life grid voltage and frequency support solutions. Maxwell's grid energy storage systems are an integral design element in the Siemens' SVC PLUS FS that will provide system inertia in the form of fast, active power injection. In connection with China's light rail infrastructure and wind market, Maxwell has partnered with China Railway Rolling Rock Corporation to develop lithium-ion capacitor based light rail on-board systems and looks to continue ongoing development of offshore wind resources in the country.

27. On August 6, 2018, Maxwell reported its financial results for the second quarter of 2018, including total revenue of $29.5 million, compared to $28.4 million of total revenue in the first quarter of 2018. Despite a challenging market due to recent U.S. tariffs on China imports and unclear U.S. tax incentive policy, defendant Fink remained positive about the Company's future, stating:

> Despite this, we believe that the long-term fundamentals of our business have not changed. End demand in the markets we serve is growing, we continue to make excellent progress with our dry battery electrode technology development and strategic partnership discussions, and our overall strategy is playing out as intended. . . . We continue to make progress in all our energy storage target markets and are well positioned for long-term growth. Although we are facing short-term headwinds, the core energy storage product line is stable and market indicators bode well for mid- to long-term robust demand for our high voltage capacitor products.

28. Thereafter, on November 6, 2018, Maxwell reported its financial results for the third quarter of 2018, including total revenue of $33.7 million, compared to $29.5 million in the second quarter of 2018. For the third quarter, energy storage revenue increased to $26.5 million compared to $22.7 million for the second quarter of 2018. Defendant Fink commented on the successful third quarter, stating:

> In Q3, we experienced sequential revenue growth driven by energy storage product sales in the wind and non-China bus markets, enhanced our position in the grid market with a new partnership, and our overall pipeline continues to grow. Additionally, testing of our dry battery electrode technology is progressing to plan and we are making headway with potential partners, which should change the long-term dynamics of our business. Long-term, we remain optimistic about our competitive position and our ability to capitalize on the global opportunities ahead of us[.]

29. Most recently, on February 14, 2019, Maxwell reported total year end revenue for 2018 of $90.4 million, compared to $87.7 million for the 2017 year end.

The Sale Process Leading to the Proposed Transaction

30. In mid-2018, Tesla and Maxwell began a series of discussions in connection with a potential strategic commercial relationship.

31. On December 12, 2018, Brian Scelfo ("Scelfo") of Tesla contacted defendant Fink to convey Tesla's interest in a potential acquisition of Maxwell rather than pursuing a strategic commercial relationship.

32. The next day, the Board met and discussed whether to engage in discussions regarding a potential sale of Maxwell and in particular with entering into negotiations with Tesla, including whether and how to respond to any proposal that may be received from Tesla and whether to contact additional parties to gauge their interest in acquiring Maxwell. The Board authorized Barclays to work with defendant Fink and his executive management team, on exploring a potential sale of Maxwell pursuant to the terms of an existing engagement agreement that had previously been entered into between Maxwell and Barclays in January 2017, including authorization for management to begin engagement with Tesla to explore Tesla's interest in an acquisition.

33. Following the December 13, 2018 Board meeting, defendant Fink received a call from Scelfo, who expressed Tesla's interest in conducting due diligence for a potential transaction.

On December 14, 2018, Tesla and Maxwell entered into the mutual nondisclosure agreement related to a possible negotiated transaction between Tesla and Maxwell.

34. On December 14, 2018, Tesla delivered a non-binding letter of intent to defendant Fink proposing to acquire 100% of the outstanding shares of capital stock of Maxwell for a per share purchase price of $2.35, paid in shares of Tesla stock based on an exchange ratio to be fixed at the time of signing definitive transaction documents.

35. On December 18, 2018, the Board met and authorized defendant Fink and Company management to continue discussions with Tesla while seeking a higher per share offer price.

36. On December 20, 2018, Scelfo, on behalf of Tesla, delivered a revised non-binding letter of intent to defendant Fink to acquire 100% of the outstanding shares of capital stock of Maxwell for a per share purchase price of $3.10.

37. Between December 23 and December 28, 2018, defendant Fink had numerous email correspondences with Scelfo in order to conduct further diligence and discuss the benefits of a potential transaction. During this period, Scelfo conveyed that Tesla was no longer interested in a potential strategic commercial arrangement with Maxwell and it would move in a different direction should Maxwell and Tesla be unable to reach an agreement regarding a potential acquisition of the entire capital stock of Maxwell.

38. Following a December 28, 2018 Board meeting, defendant Fink contacted Scelfo and indicated to Scelfo that it was the Board's view that it would likely require at least $5.75—$6.00 per share price to gain the support of Maxwell's largest institutional investors.

39. On January 7, 2019, Scelfo, on behalf of Tesla, delivered a revised non-binding letter of intent to defendant Fink to acquire 100% of the outstanding shares of capital stock of Maxwell for a per share purchase price of $4.35.

40. On January 14, 2019, the Strategic Transaction Committee of the Board (the "Strategic Transaction Committee") met and discussed a list of potential alternative buyers of Maxwell jointly identified by Barclays and members of Maxwell management. Two days later, the Strategic Transaction Committee met and authorized Barclays to proceed with contacting all potential parties that had been identified, other than two companies that would be contacted by a member of the Board. None of the parties submitted a bid for the Company.

41. Also on January 16, 2019, Maxwell provided a written response to Tesla proposing a counteroffer of $4.75 per share and further indicating that if Tesla shares were provided as consideration in the transaction, Maxwell would request a pricing formula that gave Maxwell shareholders fixed value for their Maxwell shares to account for any fluctuations in the Tesla trading price between signing and closing.

42. On January 18, 2019, Scelfo, on behalf of Tesla, delivered a revised non-binding letter of intent to defendant Fink for an acquisition of 100% of the outstanding shares of capital stock of Maxwell for $4.75.

43. On January 23, 2019, the Board met and approved Maxwell entering into a non-binding letter of intent and exclusivity agreement with Tesla. In addition, based upon the potential transaction and updated information related to sales and customer orders and forecasts, the Board approved the financial projections extended out to 2025 prepared by Maxwell's management, which were also updated to take into account recent developments, including the removal of any potential revenue based on a potential commercial arrangement with Tesla and the addition of forecasted revenue amounts from potential alternative automotive manufacturers.

44. Later that day, Maxwell and Tesla entered into the non-binding letter of intent and an exclusivity and non-solicitation agreement with Tesla providing for exclusive negotiations through February 21, 2019.

45. In the afternoon of February 3, 2019, the Strategic Transaction Committee held a special meeting and Barclays presented its financial analyses underlying its fairness opinion. The Strategic Transaction Committee recommended, among other things, that the Board enter into the Proposed Transaction.

46. Immediately following the meeting of the Strategic Transaction Committee, the Board held a special meeting and Barclays delivered its fairness opinion and the Board determined to enter into the Proposed Transaction.

47. Thereafter, on February 3, 2019, Maxwell and Tesla signed the Merger Agreement and, before the open of markets on February 4, 2019, Maxwell issued a press release announcing the Proposed Transaction that stated, in relevant part:

> **San Diego (February 4, 2019)**—Maxwell Technologies, Inc. (Nasdaq: MXWL or the "Company" or "Maxwell"), a leading developer and manufacturer of energy solutions, today announced it has entered into a definitive agreement (the "Merger Agreement") to be acquired by Tesla, Inc. (Nasdaq: TSLA or "Tesla"). Tesla will commence an all stock exchange offer for all the issued and outstanding shares of the Company (the "Offer"), after which the Company will be merged with a Tesla subsidiary and become a wholly owned subsidiary of Tesla.
>
> 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 common stock as reported on the NASDAQ Global Select Market for the five consecutive trading days preceding the expiration of the Offer, and which is subject to a floor that has been set at 80% of a volume weighted average price of Tesla common stock calculated prior to signing.
>
> The closing of the transaction is subject to the successful tender and exchange of shares, certain regulatory approvals and customary closing conditions. These terms, along with additional terms and conditions of the transaction, can be found 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.
>
> While there can be no assurances on the closing date, the Company anticipates that the merger will be consummated in the second quarter of 2019, or shortly thereafter, should all conditions be met and subject to the timing of the aforementioned approvals.

The Merger Agreement and the consummation of the Offer, merger and other transactions contemplated in the Merger Agreement have been unanimously approved by Maxwell's board of directors, all of whom recommend to the Company's stockholders that they accept the Offer and tender their Maxwell 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.

"We are very excited with today's announcement that Tesla has agreed to acquire Maxwell. Tesla is a well-respected and world-class innovator that shares a common goal of building a more sustainable future," said Dr. Franz Fink, President and Chief Executive Officer of Maxwell. "We believe this transaction 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.

Insiders' Interests in the Proposed Transaction

48. Maxwell insiders are the primary beneficiaries of the Proposed Transaction, not the Company's public stockholders. The Board and the Company's executive officers are conflicted because they will have secured unique benefits for themselves from the Proposed Transaction not available to Plaintiff and the public stockholders of Maxwell.

49. Maxwell insiders stand to reap substantial financial benefits for securing the deal with Tesla. For example, the following table sets forth the expected value of each of Maxwell's non-employee directors' options and time-based RSUs as of February 11, 2019:

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

50. Further, if they are terminated in connection with the Proposed Transaction, Maxwell's named executive officers are set to receive substantial cash severance payments in the form of golden parachute compensation, as set forth in the following table:

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

The Recommendation Statement Contains Numerous Material Misstatements or Omissions

51. The defendants filed a materially incomplete and misleading Recommendation Statement with the SEC and disseminated it to Maxwell's stockholders. The Recommendation Statement misrepresents or omits material information that is necessary for the Company's stockholders to make an informed decision whether to tender their shares in favor of the Proposed Transaction.

52. Specifically, as set forth below, the Recommendation Statement fails to provide Company stockholders with material information or provides them with materially misleading information concerning: (i) Maxwell management's financial projections; (ii) potential conflicts of interest faced by the Company's financial advisor, Barclays, and Company insiders; and (iii) the data and inputs underlying the financial valuation analyses that support the fairness opinion provided by Barclays. Accordingly, Maxwell stockholders are being asked to make a tender decision in connection with the Proposed Transaction without all material information at their disposal.

Material Omissions Concerning Maxwell's Financial Projections

53. The Recommendation Statement is materially deficient because it fails to disclose material information relating to the Company's intrinsic value and prospects going forward.

54. The Recommendation Statement sets forth that in connection with its 2019 long-range plan process, Maxwell's management prepared financial projections for calendar years 2019 through 2023, which were reviewed by the Board. Recommendation Statement at 30.

55. The Recommendation Statement fails to disclose, however, (i) the specific timeframe the projections for the calendar years 2019 to 2023 prepared in connection with Maxwell's 2019 long-range plan process were created and reviewed with the Board; (ii) the unlevered free cash flow figures for this set of projections; and (iii) whether these projections assumed the refinancing of Maxwell's $46 million of Senior Convertible Notes due in 2022.

56. Additionally, with respect to the updated projections which were extended for the calendar years 2024 to 2025, the Recommendation Statement fails to disclose the rationale for the removal of any potential revenue based on a potential commercial arrangement with Tesla, and quantification of the revenue attributable to a potential commercial arrangement with Tesla that was removed from the updated projections.

57. Without this omitted projection information, Maxwell stockholders cannot adequately assess the revisions to the Company's projections and whether the revisions were proper or were engineered to depress the future financial outlook of the Company in order to make the Offer Price appear more favorable.

58. The omission of this information renders the statements in the "Projected Financial Information" section of the Recommendation Statement false and/or materially misleading in contravention of the Exchange Act.

Material Omissions Concerning Barclays' and Company Insiders' Potential Conflicts of Interest

59. The Recommendation Statement also fails to disclose material information concerning potential conflicts of interest.

60. The Recommendation Statement fails to disclose material information concerning the fees received by Barclays for any past work performed for the Company or Tesla and its affiliates.

61. For example, with respect to Barclays, the Recommendation Statement sets forth: Barclays is acting as financial advisor to Maxwell in connection with the proposed transaction. As compensation for its services in connection with the proposed transaction, Maxwell has paid Barclays an opinion fee of $500,000 and has agreed to pay Barclays an additional transaction fee, currently estimated at approximately $4.37 million, which will be payable by Maxwell upon consummation of the transactions contemplated by the merger agreement. In addition, Maxwell has agreed to reimburse Barclays for its reasonable out-of-pocket expenses incurred in connection with the proposed transaction and to indemnify Barclays for certain liabilities that may arise out of its engagement by Maxwell and the rendering of Barclays' opinion. Barclays has performed various investment banking and financial services for Maxwell, Tesla and their affiliates in the past, and expect to perform such services in the future, and have received, and expect to receive, customary fees for such services. Specifically, in the past two years, Barclays has performed the following investment banking and financial services: (i) acted as bookrunner in connection with Tesla's offering of $1.0 billion convertible notes in March 2017; (ii) acted as an underwriter in connection with Tesla's $402.5 million follow-on offering in March 2017; (iii) acted as financial advisor in connection with the Maxwell's Defense Advisory Settlement entered into in April 2017; (iv) acted as joint bookrunner in connection with Tesla's inaugural high yield offering of $1.80 billion senior notes due 2025 in August 2017; (v) acted as an underwriter in connection with the Maxwell's $46.0 million senior unsecured convertible notes offering in October 2017; (vi) acted as an underwriter in connection with the Maxwell's $23.0 million follow-on offering in August 2018; and (vii) acted as financial advisor in connection with the Maxwell's divestiture of its high voltage capacitors business in December 2018. In addition, (i) Barclays is currently engaged by the Maxwell to advise on certain corporate defensive advisory matters should they arise and we would receive customary fees in connection therewith; (ii) an affiliate of Barclays acts as a lender under Tesla's $1.2 billion revolving credit facility which expires in June 2020; (iii) in addition to the lending relationship with Tesla specified in the preceding clause, an affiliate of Barclays also acts as a lender in connection with two other facilities with different entities affiliated with Tesla, both of which expire in August 2019; and (iv) Barclays remains in contact with Tesla concerning the possible future provision of investment banking and financial services.

Recommendation Statement at 39. The Recommendation Statement, however, fails to disclose the fees Barclays received in connection with the services it performed for Maxwell, Tesla and entities affiliated with Tesla.

62. Full disclosure of investment banker compensation and all potential conflicts is required due to the central role played by investment banks in the evaluation, exploration, selection, and implementation of strategic alternatives.

63. The Recommendation Statement also fails to disclose material information concerning the potential conflicts of interest faced by Maxwell insiders.

64. The Recommendation Statement fails to disclose whether any Maxwell executives have secured positions with the combined company as well as the details of any employment -related discussions and negotiations that occurred between Tesla and Maxwell executive officers, including who participated in all such communications, when they occurred and their content. The Recommendation Statement further fails to disclose whether any of Tesla's prior proposals or indications of interest mentioned management retention in the combined company or the purchase of or participation in the equity of the surviving corporation.

65. Communications regarding post-transaction employment during the negotiation of the underlying transaction must be disclosed to stockholders. This information is necessary for stockholders to understand potential conflicts of interest of management and the Board, as that information provides illumination concerning motivations that would prevent fiduciaries from acting solely in the best interests of the Company's stockholders.

66. The omission of this information renders the statements in the "Background of the Offer and the Merger" section of the Recommendation Statement false and/or materially misleading in contravention of the Exchange Act.

Material Omissions Concerning Barclays' Financial Analyses

67. The Recommendation Statement describes Barclays' fairness opinion and the various valuation analyses performed in support of its opinion. However, the description of Barclays' fairness opinion and analyses fails to include key inputs and assumptions underlying the analyses. Without this information, as described below, Maxwell's public stockholders are unable to fully understand these analyses and, thus, are unable to determine what weight, if any, to place on Barclays' fairness opinion in determining whether to tender their shares in favor of the Proposed Transaction. This omitted information, if disclosed, would significantly alter the total mix of information available to Maxwell's stockholders.

68. With respect to Barclays' *Discounted Cash Flow Analysis ("DCF")*, the Recommendation Statement fails to disclose: (i) quantification of the inputs and the assumptions underlying the discount rates ranging from 14.0% to 18.0%; (ii) what financial metric Barclays applied perpetuity growth rates to in order to derive the residual value of Maxwell at the end of the forecast period, or "terminal value"; (iii) the implied terminal multiples resulting from the analysis; and (iv) quantification of Maxwell's net debt as of December 31, 2018, used by Barclays in its analysis.

69. With respect to Barclays' *Selected Comparable Company Analysis* and *Selected Precedent Transaction Analysis*, the Recommendation Statement fails to disclose the individual multiples and financial metrics for the companies and transactions observed by Barclays in its respective analyses.

70. When a banker's endorsement of the fairness of a transaction is touted to stockholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed.

71. The omission of this information renders the statements in the "Opinion of Maxwell's Financial Advisor" section of the Recommendation Statement false and/or materially misleading in contravention of the Exchange Act.

72. The Individual Defendants were aware of their duty to disclose the above-referenced omitted information and acted negligently (if not deliberately) in failing to include this information in the Recommendation Statement. Absent disclosure of the foregoing material information prior to the expiration of the Tender Offer, Plaintiff will be unable to make a fully-informed tender decision in connection with the Proposed Transaction and is thus threatened with irreparable harm warranting the injunctive relief sought herein.

CLAIMS FOR RELIEF

COUNT I

Claims Against All Defendants for
Violations of Section 14(e) of the Exchange Act

73. Plaintiff repeats all previous allegations as if set forth in full.

74. Defendants violated Section 14(e) of the Exchange Act by issuing the Recommendation Statement in which they made untrue statements of material facts or failed to state all material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or engaged in deceptive or manipulative acts or practices, in connection with the Tender Offer.

75. Defendants knew that Plaintiff would rely upon their statements in the Recommendation Statement in determining whether to tender its shares pursuant to the Tender Offer.

76. As a direct and proximate result of these defendants' unlawful course of conduct in violation of Section 14(e) of the Exchange Act, absent injunctive relief from the Court, Plaintiff has sustained and will continue to sustain irreparable injury by being denied the opportunity to make an informed decision in deciding whether or not to tender its shares.

COUNT II

Claims Against the Individual Defendants for Violation of Section 20(a) of the Exchange Act

77. Plaintiff repeats all previous allegations as if set forth in full.

78. The Individual Defendants acted as controlling persons of Maxwell within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers or directors of Maxwell and participation in or awareness of the Company's operations or intimate knowledge of the false statements contained in the Recommendation Statement filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading.

79. Each of the Individual Defendants was provided with or had unlimited access to copies of the Recommendation Statement and other statements alleged by Plaintiff to be misleading prior to or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

80. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same. The Recommendation Statement at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Transaction. They were, thus, directly involved in the making of this document.

81. In addition, as the Recommendation Statement sets forth at length, and as described herein, the Individual Defendants were each involved in negotiating, reviewing, and approving the Proposed Transaction. The Recommendation Statement purports to describe the various issues and information that they reviewed and considered — descriptions which had input from the Individual Defendants.

82. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

83. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that defendants' actions threaten to inflict.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and preliminary and permanent relief, including injunctive relief, in its favor on behalf of Maxwell, and against defendants, as follows:

A. Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;

B. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages to Plaintiff;

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

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

JURY DEMAND

Plaintiff demands a trial by jury on all claims and issues so triable.

Dated: March 1, 2019

WEISSLAW LLP
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Exhibit (a)(5)(G)

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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

FRANCK PRISSERT, Plaintiff, v. MAXWELL TECHNOLOGIES, INC., STEVE BILODEAU, FRANZ J FINK, RICHARD BERGMAN, JÖRG BUCHHEIM, BURKHARD GOESCHEL, ILYA GOLUBOVICH, and JOHN MUTCH, Defendants.	Civil Action No. **'19CV0429 L BGS** **COMPLAINT** **DEMAND FOR JURY TRIAL** **1. VIOLATIONS OF SECTION 14(e) OF THE SECURITIES EXCHANGE ACT OF 1934** **2. VIOLATIONS OF SECTION 20(a) OF THE SECURITIES EXCHANGE ACT OF 1934**

Plaintiff Franck Prissert ("Plaintiff"), by his undersigned attorneys, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This action is brought by Plaintiff against Maxwell Technologies, Inc. ("Maxwell" or the "Company") and the members of the Company's board of directors (collectively, the "Board" or "Individual Defendants," and, together with Maxwell, the "Defendants") for their violations of Sections 14(e) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78n(e) and 78t(a) in connection with the tender offer ("Tender Offer") by Tesla, Inc., through its subsidiary Cambria Acquisition Corp. (collectively "Tesla"), to acquire all of the issued and outstanding shares of Maxwell (the "Proposed Merger").

2. On February 3, 2019, Maxwell entered into an agreement and plan of merger (the "Merger Agreement"), whereby shareholders of Maxwell common stock will receive shares of Tesla common stock equal to the quotient obtained by dividing $4.75 by the volume weighted average of the daily volume weighted average of the trading price of one (1) share of Tesla common stock as reported on the Nasdaq Global Select Market for the five (5) consecutive trading days ending on and including the second trading day immediately preceding the expiration of the Tender Offer in exchange for each share of Maxwell stock they own (the "Merger Consideration").

3. On February 20, 2019, in order to convince Maxwell shareholders to tender their shares, the Board authorized the filing of a materially incomplete and misleading Schedule 14D-9 Solicitation/Recommendation Statement (the "Recommendation Statement") with the Securities and Exchange Commission ("SEC"). In particular, the Recommendation Statement contains materially incomplete and misleading information concerning: (i) the valuation of Tesla and the Merger Consideration; (ii) the valuation analyses performed by the Company's financial advisor, Barclays Capital Inc. ("Barclays"); (iii) the Maxwell financial projections; and (iv) the conflicts of interest faced by Barclays.

4. The Tender Offer is scheduled to expire at 11:59 p.m., New York City time, on March 19, 2019 (the "Expiration Date"). It is imperative that the material information that has been omitted from the Recommendation Statement is disclosed to the Company's shareholders prior to the forthcoming Expiration Date so they may make an informed determination on whether to tender their shares.

5. For these reasons, and as set forth in detail herein, Plaintiff seeks to enjoin Defendants from closing the Tender Offer or taking any steps to consummate the Proposed Merger, unless and until the material information discussed below is disclosed to Maxwell shareholders or, in the event the Proposed Merger is consummated, to recover damages resulting from the Defendants' violations of the Exchange Act.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Section 14(e) and 20(a) of the Exchange Act.

7. The Court has personal jurisdiction over each of the Defendants because each conducts business in and maintains operations in this District or is an individual who either is present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

8. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as pursuant to 28 U.S.C. § 1391, because: (i) the conduct at issue took place and had an effect in this District; (ii) Maxwell maintains its principal place of business in this District and each of the Individual Defendants, and Company officers or directors, either resides in this District or has extensive contacts within this District; (iii) a substantial portion of the transactions and wrongs complained of herein occurred in this District; (iv) most of the relevant documents pertaining to Plaintiff's claims are stored (electronically and otherwise), and evidence exists, in this District; and (v) Defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

PARTIES

9. Plaintiff is, and at all relevant times has been, a shareholder of Maxwell.

10. Defendant Maxwell is a Delaware corporation and maintains its principal executive office at 3888 Calle Fortunada, San Diego, California 92123. Maxwell develops, manufactures, and markets energy storage and power delivery products for transportation, industrial, and other applications. The Company's common stock trades on the Nasdaq under the ticker symbol "MXWL".

11. Individual Defendant Steve Bilodeau is a director of Maxwell and is the Chairman of the Board.

12. Individual Defendant Dr. Franz J Fink is a director of Maxwell and is the President and Chief Executive Officer of the Company.

13. Individual Defendant Richard Bergman is, and has been at all relevant times, a director of the Company.

14. Individual Defendant Jörg Buchheim is, and has been at all relevant times, a director of the Company.

15. Individual Defendant Burkhard Goeschel is, and has been at all relevant times, a director of the Company.

16. Individual Defendant Ilya Golubovich is, and has been at all relevant times, a director of the Company.

17. Individual Defendant John Mutch is, and has been at all relevant times, a director of the Company.

18. The defendants identified in paragraphs 10-17 are collectively referred to as the "Defendants".

SUBSTANTIVE ALLEGATIONS

I. Background and the Proposed Merger

19. Maxwell, incorporated on August 28, 1996, develops, manufactures and markets energy storage and power delivery products for transportation, industrial, information technology and other applications, and microelectronic products for space and satellite applications. The Company offers three product lines: Ultracapacitors, High-Voltage Capacitors, and Radiation-Hardened Microelectronic Products.

20. Tesla, formerly Tesla Motors, Inc., incorporated on July 1, 2003, designs, develops, manufactures and sells fully electric vehicles, and energy storage systems, as well as installs, operates, and maintains solar and energy storage products. The Company operates through two segments: automotive, and energy generation and storage. The automotive segment includes the design, development, manufacturing, and sales of electric vehicles. The energy generation and storage segment includes the design, manufacture, installation, and sale or lease of stationary energy storage products and solar energy systems to residential and commercial customers, or sale of electricity generated by its solar energy systems to customers.

21. On February 4, 2019, Maxwell and Tesla issued a joint press release announcing the Proposed Merger. The press release stated in relevant part:

> **Maxwell Technologies Announces Definitive Merger Agreement with Tesla, Inc.**
>
> *Maxwell shares valued at $4.75 in upcoming exchange offer*
>
> **San Diego (February 4, 2019)—**Maxwell Technologies, Inc. (Nasdaq: MXWL or the "Company" or "Maxwell"), a leading developer and manufacturer of energy solutions, today announced it has entered into a definitive agreement (the "Merger Agreement") to be acquired by Tesla, Inc. (Nasdaq: TSLA or "Tesla"). Tesla will commence an all stock exchange offer for all the issued and outstanding shares of the Company (the "Offer"), after which the Company will be merged with a Tesla subsidiary and become a wholly owned subsidiary of Tesla.
>
> 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 common stock as reported on the NASDAQ Global Select Market for the five consecutive trading days preceding the expiration of the Offer, and which is subject to a floor that has been set at 80% of a volume weighted average price of Tesla common stock calculated prior to signing.

> The closing of the transaction is subject to the successful tender and exchange of shares, certain regulatory approvals and customary closing conditions. These terms, along with additional terms and conditions of the transaction, can be found 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.
>
> While there can be no assurances on the closing date, the Company anticipates that the merger will be consummated in the second quarter of 2019, or shortly thereafter, should all conditions be met and subject to the timing of the aforementioned approvals.
>
> The Merger Agreement and the consummation of the Offer, merger and other transactions contemplated in the Merger Agreement have been unanimously approved by Maxwell's board of directors, all of whom recommend to the Company's stockholders that they accept the Offer and tender their Maxwell 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.
>
> "We are very excited with today's announcement that Tesla has agreed to acquire Maxwell. Tesla is a well-respected and world-class innovator that shares a common goal of building a more sustainable future," said Dr. Franz Fink, President and Chief Executive Officer of Maxwell. "We believe this transaction 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."
>
> DLA Piper, LLP (US) represented Maxwell as outside legal counsel, and Barclays Capital Inc. served as independent advisor to Maxwell in connection with the transaction. Wilson Sonsini Goodrich & Rosati represented Tesla as outside legal counsel.

22. The Merger Consideration is inadequate consideration for Maxwell shareholders and does not reflect fair value for the Company. In fact, the purported $4.75 valuation represents a **32% *discount*** to the Company's 52-week high trading price of $6.27. Moreover, in the month since the announcement of the Merger Agreement, the price of Tesla common stock (ticker symbol TSLA) has dropped over $17, nearly 6%. Accordingly, value of the Merger Consideration could be less than previously stated. It is therefore imperative that Maxwell shareholders receive the material information (discussed in detail below) that Defendants have omitted from the Recommendation Statement, which is necessary for shareholders to properly exercise their corporate suffrage rights and make an informed decision concerning whether to tender their shares in the Proposed Merger.

II. The Materially Incomplete and Misleading Recommendation Statement

23. On February 20, 2019, Defendants filed the Recommendation Statement with the SEC. The Recommendation Statement has been disseminated to the Company's shareholders and solicits the Company's shareholders to tender their shares in the Tender Offer. The Individual Defendants were obligated to carefully review the Recommendation Statement before it was filed with the SEC and disseminated to the Company's shareholders to ensure that it did not contain any material misrepresentations or omissions. However, the Recommendation Statement misrepresents and/or omits material information that is necessary for the Company's shareholders to make an informed decision concerning whether to tender their shares, in violation of Sections 14(e) and 20(a) of the Exchange Act.

24. First, the Recommendation Statement fails to disclose any financial information for Tesla or any of the synergies projected for the combined company. This financial information is plainly material to Maxwell shareholders who are being asked to surrender their shares in the Company in exchange for a partial stake in the post-merger combined company. In order to make an informed decision on whether to tender their shares, Maxwell shareholders require two critical pieces of information: (i) the value of the Company they are receiving shares of, Tesla; and (ii) the value of the combined company, including synergies.

25. In explaining their reasons for the Board's recommendation of the Proposed Merger, the Recommendation Statement lists the "Future Success" and the ability of Maxwell shareholders to "meaningfully participate in the future growth of Tesla and, indirectly, Maxwell" among the factors they considered. Recommendation Statement at 27. In fact, Defendants concede the materiality of this information: "In the course of reaching its determination that the Offer and the Merger are fair to, and in the best interests of Maxwell stockholders, and its recommendation that Maxwell stockholders accept the Offer and tender their shares of Maxwell Common Stock in the offer, the Maxwell Board considered numerous factors, including the following *material* factors and benefits of the Offer and Merger, each of which the Maxwell Board believed supported its unanimous determination and recommendation." Recommendation Statement at 26 (emphasis added). Furthermore, the Recommendation Statement indicates that Maxwell engaged in multiple rounds of due diligence into the business and financial prospects of Tesla and Tesla common stock. Maxwell management even presented to the Board a net present value analysis surrounding the potential long-term value that could be realized by Tesla through an acquisition of Maxwell. Clearly Tesla's financial information was important for the Board to decide on the fairness of the Merger Consideration, but this information was withheld from Maxwell shareholders.

26. Moreover, in the Form S-4 Registration Statement Tesla filed in order to consummate the Proposed Merger (the "S-4")—which was incorporated by reference to the Recommendation Statement—Tesla repeatedly refers to the accretive synergies as reasons to support the Proposed Merger: "Tesla plans to complete the merger because it believes that the acquisition of Maxwell by Tesla will provide significant long-term growth prospects and increased stockholder value for the combined company, including as a result of the substantial anticipated synergies resulting from the acquisition." (S-4 at 14); "the view that the merger will generate cost savings and improvements" S-4 at 36. Tesla similarly concedes the materiality of this information, "The foregoing discussion of the information and

factors considered by the Tesla board of directors is not intended to be exhaustive, but includes the *material* positive and negative factors considered." S-4 at 37 (emphasis added). The Recommendation Statement meanwhile references the synergies of the deal in the cautionary forward-looking statements section, but is otherwise silent on the issue: "Tesla's ability to implement Tesla's plans, forecasts and other expectations with respect to Maxwell's business after the completion of the transaction and realize expected synergies;" Recommendation Statement at 43.

27. Recommending that Maxwell shareholders tender their shares on the basis of the value of the combined company without providing the financial information of the acquiring company or synergy values used to make that determination renders such statements misleading. Perhaps nothing is more relevant for making a merger decision than the earnings picture of the acquiring company, at least to a shareholder of the company being acquired. Accordingly, Defendants must disclose the financial information for Tesla and the information related to the synergies of the Proposed Merger, so that Maxwell shareholders may understand the decision they are being asked to make.

28. Second, with respect to Barclays' *Selected Comparable Company Analysis* and *Selected Precedent Transaction Analysis*, the Recommendation Statement fails to disclose the individual multiples for each company and transaction utilized in the analyses. A fair summary of a companies or transactions analysis requires the disclosure of the individual multiples for each company and transaction; merely providing the range of values, or the means or medians, that a banker applied is insufficient, as shareholders are unable to assess whether the banker applied appropriate multiples, or, instead, applied unreasonably low multiples in order to present the Merger Consideration in the most favorable light—i.e. as low as possible. Once again, Defendants concede the materiality of this information in stating their reasons for supporting the Proposed Merger: "The Maxwell Board considered the

fact that the valuation of Maxwell implied by the offer price was at a premium to the comparable company and precedent transaction multiples identified by Maxwell and its advisors." Recommendation Statement at 27. Moreover, the analysis does not indicate which set of Maxwell projections were used to make the comparisons. Accordingly, the omission of this material information renders the summaries of these analyses and the Board's statement provided in the Recommendation Statement misleading.

29. Additionally, in summarizing Barclays' *Discounted Cash Flow Analysis* the Recommendation Statement fails to disclose the following key components used in its analysis that must be disclosed for shareholders to comprehend the analyses: (i) the inputs and assumptions underlying the calculation of the discount rate range of 14.0% to 18.0%, (including WACC and CAPM components); (ii) the inputs and assumptions underlying the selection of the 3% to 5% perpetuity growth rates used to derive the terminal values; (iii) the actual terminal values Barclays calculated; and (iv) the estimated net debt Barclays used to adjust the Company's enterprise value.

30. These key inputs are material to Maxwell shareholders, and their omission renders the summary of Barclays' *Discounted Cash Flow Analysis* incomplete and misleading. As a highly-respected professor explained in one of the most thorough law review articles explaining the fundamental flaws with the valuation analyses bankers perform in support of fairness opinions: in a discounted cash flow analysis a banker takes management's forecasts, and then makes several key choices "each of which can significantly affect the final valuation." Steven M. Davidoff, *Fairness Opinions*, 55 Am. U.L. Rev. 1557, 1576 (2006). Such choices include "the appropriate discount rate, and the terminal value…" *Id*. As Professor Davidoff explains:

> There is substantial leeway to determine each of these, and any change can markedly affect the discounted cash flow value. For example, a change in the discount rate by one percent on a stream of cash flows in the billions of dollars can change the discounted cash flow value by tens if not hundreds of millions of dollars….This issue arises not only with a discounted cash flow analysis, but with each of the other valuation techniques. This dazzling variability makes it difficult to rely, compare, or analyze the valuations underlying a fairness opinion *unless full disclosure is made of the various inputs in the valuation process, the weight assigned for each, and the rationale underlying these choices*. The substantial discretion and lack of guidelines and standards also makes the process vulnerable to manipulation to arrive at the "right" answer for fairness. This raises a further dilemma in light of the conflicted nature of the investment banks who often provide these opinions.

Id. at 1577-78.

31. Given the circumstances surrounding Barclays' selection of the discount rate range, the disclosure of the above-information is particularly important here. On page 38, the Recommendation Statement states that the discount rate range was selected "based on an analysis of the weighted average cost of capital of Maxwell and the selected comparable companies used in the 'Selected Comparable Companies Analysis' described above." However, in the Selected Comparable Companies Analysis, Barclays found the companies selected inapposite for comparison. Accordingly, it would seem inappropriate to use them to select the discount rate range. Thus, without the above-omitted information Maxwell shareholders are misled as to the reasonableness or reliability of Barclays' analyses and are unable to properly assess the fairness of the Proposed Merger. As such, these material omissions render the summary of the *Discounted Cash Flow Analysis* included in the Recommendation Statement misleading.

32. Third, Barclays' use of the downwardly revised projections created on January 23, 2019 to perform their valuation analyses misleads shareholders as to the fairness of the Merger Consideration. At the eleventh hour, after failing to achieve the \$5.75-\$6.00 price range the Board found to be fair—and on the same day Maxwell and Tesla entered into the non-binding letter of intent and an exclusivity and non-solicitation agreement—the Board approved the downward revision of Maxwell's financial projections. The Recommendation Statement purports that this

was done to take into account recent developments, including the removal of any potential revenue based on a potential commercial arrangement with Tesla; however, no revenue loss had occurred. And the use of the substantially higher original projections would have almost certainly cast the value of the Merger Consideration outside of the range of fairness. For these same reasons, the assertion on page 34 of the Recommendation Statement that "that such projections were reasonably prepared on a basis reflecting the best currently available estimates and judgments of the management of Maxwell as to Maxwell's future financial performance and that Maxwell will perform substantially in accordance with such projections" is also misleading.

33. Fourth and finally, the Recommendation Statement fails to disclose the amount of compensation Barclays received for its prior investment banking and financial services provided to both Maxwell and Tesla. Such information is plainly material to Maxwell shareholders.[1] It is imperative for shareholders to be able to understand what factors might influence the financial advisor's analytical efforts. A financial advisor's own proprietary financial interest in a Proposed Transaction must be carefully considered when assessing how much credence to give its analysis. A reasonable shareholder would want to know what important economic motivations that the advisor, employed by a board to assess the fairness of the transaction to the shareholders, might have. This is especially true when that motivation could rationally lead the advisor to favor a deal at a less than optimal price, because the procession of a deal was more important to them—given their overall economic interest—than only approving a deal at truly fair price to shareholders.

34. On page 39 the Recommendation Statement states:

1 Additionally, the failure to disclose banker compensation is a violation of Item 1015 of Regulation M-A, which requires the disclosure of "any compensation received or to be received as a result of the relationship between" a financial advisor and the subject company or its affiliates. 17 C.F.R. § 229.1015(b)(4).

> Specifically, in the past two years, Barclays has performed the following investment banking and financial services: (i) acted as bookrunner in connection with Tesla's offering of $1.0 billion convertible notes in March 2017; (ii) acted as an underwriter in connection with Tesla's $402.5 million follow-on offering in March 2017; (iii) acted as financial advisor in connection with the Maxwell's Defense Advisory Settlement entered into in April 2017; (iv) acted as joint bookrunner in connection with Tesla's inaugural high yield offering of $1.80 billion senior notes due 2025 in August 2017; (v) acted as an underwriter in connection with the Maxwell's $46.0 million senior unsecured convertible notes offering in October 2017; (vi) acted as an underwriter in connection with the Maxwell's $23.0 million follow-on offering in August 2018; and (vii) acted as financial advisor in connection with the Maxwell's divestiture of its high voltage capacitors business in December 2018. In addition, (i) Barclays is currently engaged by the Maxwell to advise on certain corporate defensive advisory matters should they arise and we would receive customary fees in connection therewith; (ii) an affiliate of Barclays acts as a lender under Tesla's $1.2 billion revolving credit facility which expires in June 2020; (iii) in addition to the lending relationship with Tesla specified in the preceding clause, an affiliate of Barclays also acts as a lender in connection with two other facilities with different entities affiliated with Tesla, both of which expire in August 2019; and (iv) Barclays remains in contact with Tesla concerning the possible future provision of investment banking and financial services.

Yet, inexplicably, the Recommendation Statement fails to disclose the amount of compensation Barclays received. The omission of quantified compensation details from Barclays' previous work for both companies renders the statement provided on page 39 of the Recommendation Statement, and potentially Barclays' fairness opinion, materially incomplete and misleading

35. In sum, the omission and/or misstatement of the above-referenced information renders statements in the Recommendation Statement materially incomplete and misleading in contravention of the Exchange Act. Absent disclosure of the foregoing material information prior to the expiration of the Tender Offer, Plaintiff and other Maxwell shareholders will be unable to make a fully-informed decision regarding whether to tender their shares, and they are thus threatened with irreparable harm, warranting the injunctive relief sought herein.

COUNT I

Claims Against All Defendants for Violations of Section 14(e) of the Exchange Act

36. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

37. Defendants caused the Recommendation Statement to be issued with the intention of soliciting shareholder support of the Proposed Merger.

38. Section 14(e) of the Exchange Act provides that it is unlawful "for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading . . . in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation." 15 U.S.C. § 78n(e).

39. Defendants violated this clause of Section 14(e) because they negligently caused or allowed the Recommendation Statement to be disseminated to Maxwell shareholders in order to solicit them to tender their shares in the Tender Offer, and the Recommendation Statement contained untrue statements of material fact and/or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

40. Defendants negligently omitted the material information identified above from the Recommendation Statement or negligently failed to notice that such material information had been omitted from the Recommendation Statement, which caused certain statements therein to be materially incomplete and therefore misleading. Indeed, while Defendants undoubtedly had access to and/or reviewed the omitted material information in connection with approving the Proposed Merger, they allowed it to be omitted from the Recommendation Statement, rendering certain portions of the Recommendation Statement materially incomplete and therefore misleading. As directors and officers of Maxwell, the Individual Defendants had a duty to carefully review the Recommendation Statement before it was disseminated to the Company's shareholders to ensure that it did not contain untrue statements of material fact and did not omit material facts. The Individual Defendants were negligent in carrying out their duty.

41. Maxwell is imputed with the negligence of the Individual Defendants, who are each directors and/or senior officers of Maxwell.

42. As a direct result of Defendants' negligent preparation, review, and dissemination of the false and/or misleading Recommendation Statement, Plaintiff and other Maxwell shareholders are impeded from making a decision on a fully informed basis and are induced to tender their shares and accept the inadequate Merger Consideration in connection with the Proposed Merger. The false and/or misleading Recommendation Statement used to solicit the tendering of shares impedes Plaintiff and other Maxwell shareholders from making a fully informed decision regarding the Tender Offer and is an essential link in consummating the Proposed Merger, which will deprive them of full and fair value for their Maxwell shares. At all times relevant to the dissemination of the materially false and/or misleading Recommendation Statement, Defendants were aware of and/or had access to the true facts concerning the process involved in selling Maxwell, the projections for Maxwell, and Maxwell's true value, which is greater than the Merger Consideration Maxwell's shareholders will receive.

43. The misrepresentations and omissions in the Recommendation Statement are material in that a reasonable shareholder would consider them important in deciding whether to tender their shares in the Tender Offer. In addition, a reasonable investor would view a full and accurate disclosure as having significantly altered the "total mix" of information made available in the Recommendation Statement and in other information reasonably available to shareholders. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

COUNT II

Against the Individual Defendants for Violations of Section 20(a) of the

Exchange Act

44. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

45. The Individual Defendants acted as controlling persons of Maxwell within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or directors of Maxwell and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false and misleading statements contained in the Recommendation Statement, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that Plaintiff contend are false and/or misleading.

46. Each of the Individual Defendants was provided with or had unlimited access to copies of the Recommendation Statement alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause them to be corrected.

47. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control and influence the particular transactions giving rise to the violations as alleged herein, and exercised the same. The Recommendation Statement contains the unanimous recommendation of the Individual Defendants to approve the Proposed Merger. They were thus directly involved in the making of the Recommendation Statement.

48. By virtue of the foregoing, the Individual Defendants violated Section 20(a) of the Exchange Act.

49. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(e) of the Exchange Act, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the Exchange Act. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands relief in his favor and against the Defendants jointly and severally, as follows:

A. Preliminarily enjoining Defendants and their counsel, agents, employees, and all persons acting under, in concert with, or for them, from proceeding with, consummating, or closing the Proposed Merger, unless and until Defendants disclose the material information identified above that has been omitted from the Recommendation Statement;

B. Rescinding, to the extent already implemented, the Merger Agreement or any of the terms thereof, or granting Plaintiff rescissory damages;

C. Directing the Defendants to account to Plaintiff for all damages suffered as a result of their wrongdoing;

D. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and expert fees and expenses; and

E. Granting such other and further equitable relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: March 4, 2019

Respectfully submitted,

/s/ David E. Bower
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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JONATHAN MANTAK, On Behalf of Himself and All Others Similarly Situated, Plaintiff, v. MAXWELL TECHNOLOGIES, INC., RICHARD BERGMAN, STEVE BILODEAU, JÖRG BUCHHEIM, FRANZ J. FINK, BURKHARD GOESCHEL, ILYA GOLUBOVICH, and JOHN MUTCH, Defendants.	)	Case No. **'19CV0451 CAB BLM** CLASS ACTION **CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS** JURY TRIAL DEMANDED

Plaintiff Jonathan Mantak ("Plaintiff"), by and through his undersigned counsel, for his complaint against defendants, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This is a class action brought on behalf of the public stockholders of Maxwell Technologies, Inc. ("Maxwell" or the "Company") against Maxwell and the members of its Board of Directors (the "Board" or the "Individual Defendants") for their violations of Sections 14(e) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78n(e) and 78t(a) and to enjoin the expiration of a tender offer (the "Tender Offer") on a proposed transaction, pursuant to which Maxwell will be acquired by Tesla, Inc. ("Tesla") through its wholly owned subsidiary Cambria Acquisition Corp. ("Offeror") (the "Proposed Transaction").

2. On February 4, 2019, Maxwell issued a press release announcing that it had entered into an Agreement and Plan of Merger (the "Merger Agreement") to sell Maxwell to Tesla. Pursuant to the terms of the Merger Agreement, on February 20, 2019, Offeror commenced the Tender Offer to purchase all outstanding shares of Maxwell for $4.75 per share of Maxwell common stock (the "Offer Price"). Pursuant to the Tender 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 common stock as reported on the Nasdaq Global Select Market for the five consecutive trading days preceding the expiration of the Tender Offer, and which is subject to a floor that has been set at 80% of a volume weighted average price of Tesla common stock calculated prior to signing. The Tender Offer is scheduled to expire at 11:59 p.m., Eastern Time, on March 19, 2019.

3. On February 20, 2019, defendants filed a Solicitation/Recommendation Statement on Schedule 14D-9 (the "Recommendation Statement") with the U.S. Securities and Exchange Commission ("SEC"). The Recommendation Statement, which recommends that Maxwell stockholders tender their shares in favor of the Proposed Transaction, omits or misrepresents material information concerning, among other things: (i) Maxwell management's financial

projections; (ii) potential conflicts of interest faced by the Company's financial advisor, Barclays Capital Inc. ("Barclays"), and Company insiders; and (iii) the data and inputs underlying the financial valuation analyses that support the fairness opinion provided by Barclays. The failure to adequately disclose such material information constitutes a violation of Sections 14(e) and 20(a) of the Exchange Act as Maxwell stockholders need such information in order to make a fully informed decision whether to tender their shares in support of the Proposed Transaction.

4. In short, the Proposed Transaction will unlawfully divest Maxwell's public stockholders of the Company's valuable assets without fully disclosing all material information concerning the Proposed Transaction to Company stockholders. To remedy defendants' Exchange Act violations, Plaintiff seeks to enjoin the expiration of the Tender Offer unless and until such problems are remedied.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the claims asserted herein for violations of Sections 14(e) and 20(a) of the Exchange Act promulgated thereunder pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. §1331 (federal question jurisdiction).

6. This Court has jurisdiction over defendants because each defendant is either a corporation that conducts business in and maintains operations in this District, or is an individual who has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Plaintiff's claims arose in this District, where a substantial portion of the actionable conduct took place, where most of the documents are electronically stored, and where the evidence exists. Maxwell is incorporated in Delaware and is headquartered in this District. Moreover, each of the Individual Defendants, as Company officers or directors, either resides in this District or has extensive contacts within this District.

THE PARTIES

8. Plaintiff is, and has been at all times relevant hereto, a continuous stockholder of Maxwell.

9. Defendant Maxwell is a Delaware corporation and maintains its principal executive offices at 3888 Calle Fortunada, San Diego, California 92123. Maxwell's common stock is traded on the Nasdaq Global Select Market under the ticker symbol "MXWL."

10. Defendant Richard Bergman ("Bergman") has been a director of Maxwell since May 2015.

11. Defendant Steve Bilodeau ("Bilodeau") has been a director of Maxwell since May 2016 and Chairman of the Board effective as of Maxwell's 2017 Annual Shareholder Meeting.

12. Defendant Jörg Buchheim ("Buchheim") has been a director of Maxwell since July 2016.

13. Defendant Franz J. Fink ("Fink") has been President, Chief Executive Officer ("CEO") and a director of Maxwell since May 2014.

14. Defendant Burkhard Goeschel ("Goeschel") has been a director of Maxwell since February 2007.

15. Defendant Ilya Golubovich ("Golubovich") has been a director of Maxwell since May 2017.

16. Defendant John Mutch ("Mutch") has been a director of Maxwell since April 2017.

17. Defendants Bergman, Bilodeau, Bucheim, Fink, Goeschel, Golubovich and Mutch are collectively referred to herein as the "Board" or the "Individual Defendants."

OTHER RELEVANT ENTITIES

18. Tesla is a Delaware corporation and maintains its principal executive offices at 3500 Deer Creek Road, Palo Alto, California 94304. Tesla's common stock is traded on the Nasdaq Global Select Market under the ticker symbol "TSLA."

19. Offeror is a Delaware corporation and a wholly-owned subsidiary of Tesla.

CLASS ACTION ALLEGATIONS

20. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons and entities that own Maxwell common stock (the "Class"). Excluded from the Class are defendants and their affiliates, immediate families, legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

21. Plaintiff's claims are properly maintainable as a class action under Rule 23 of the Federal Rules of Civil Procedure.

22. The Class is so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through discovery, Plaintiff believes that there are thousands of members in the Class. As of February 11, 2019, there were 46,008,549 shares of Company common stock outstanding. All members of the Class may be identified from records maintained by Maxwell or its transfer agent and may be notified of the pendency of this action by mail, using forms of notice similar to that customarily used in securities class actions.

23. Questions of law and fact are common to the Class and predominate over questions affecting any individual Class member, including, *inter alia*:

(a) Whether the Individual Defendants have violated Section 14(e) of the Exchange Act;

(b) Whether the Individual Defendants have violated Section 20(a) of the Exchange Act; and

(c) Whether Plaintiff and the other members of the Class would suffer irreparable injury were the Proposed Transaction consummated.

24. Plaintiff will fairly and adequately protect the interests of the Class, and has no interests contrary to or in conflict with those of the Class that Plaintiff seeks to represent. Plaintiff has retained competent counsel experienced in litigation of this nature.

25. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

26. Defendants have acted, or refused to act, on grounds generally applicable to the Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on behalf of the Class is appropriate.

SUBSTANTIVE ALLEGATIONS

Company Background

27. For over 50 years, Maxwell, originally named Maxwell Laboratories, Inc., has been developing, manufacturing and marketing energy storage and power delivery products for automotive, heavy transportation, renewable energy, backup power, wireless communications and industrial and consumer electronics applications. Maxwell markets its products on a global scale and maintains design, sales and manufacturing locations in the United States, Germany, China and South Korea.

28. Maxwell focuses primarily on two product lines: manufacturing and marketing ultracapacitor devices for energy storage and developing its dry battery electrode technology.

29. Maxwell's ultracapacitor products are energy storage devices that possess a unique combination of high power density, extremely long operational life and the ability to charge and discharge very rapidly. Maxwell's ultracapacitor cells, multi-cell packs, modules and subsystems provide highly reliable energy storage and power delivery solutions for applications in multiple industries, including automotive, grid energy storage, wind, bus, industrial and truck. Building on the power characteristics of its ultracapacitor energy storage devices, Maxwell also manufactures lithium-ion capacitors which have enhanced energy storage capabilities and are uniquely designed to address a variety of applications in the rail, grid, and industrial markets where energy density and weight are differentiating factors.

30. With respect to dry battery electrode technology, Maxwell has developed and transformed its patented, proprietary and fundamental dry electrode manufacturing technology Maxwell has historically used to make ultracapacitors to create a technology that can be applied to the manufacturing of batteries, particularly for use in electric vehicles. As set forth in its Annual Report for the fiscal year ended December 31, 2018 filed on Form 10-K with the SEC on February 14, 2018 ("Annual Report"), Maxwell believes that improved lithium-ion batteries are the key enabling technology for vehicle electrification, and as such, cost reduction and performance improvement have become critical targets for the world's leading lithium-ion battery manufacturers and automotive original equipment manufacturers ("OEMs") and that through its dry battery electrode technology can successfully address the need to improve energy density, extend battery life and improve durability, leading to significant cost reductions and production capacity density increases and addressing customers' demands for more environmentally-responsible solutions.

31. As further set forth in its Annual Report, Maxwell is well positioned for future growth based on three approaching megatrends. First, as the use of premium features such as e-active suspension, autonomous driving and other power demanding applications continue to penetrate the automotive market, demand for high power and rapid response energy storage and power delivery increase. Second, as global emission policies continue to tighten and the cost for

lithium-ion batteries continues to fall, the automotive industry's demand for electric vehicles increases and the need for Maxwell's advanced lithium-ion battery performance and reduced costs grows. Third, as costs for renewable power generation continue to decline and converge on those of traditional forms, renewable penetration on the grid is increasing at accelerated rates. Accordingly, Maxwell's advanced energy storage and power delivery technologies for successful integration are and will be needed.

32. Maxwell continually seeks to diversify and grow its energy storage portfolio. In 2017, Maxwell acquired Nesscap Energy, Inc. ("Nesscap"), to combine Nesscap's best-in-class small cell product portfolio with Maxwell's leadership in large cell solutions to create the most complete portfolio available in the market for its customers.

33. Further according to Maxwell's Annual Report, the Company has engaged in important partnerships and business opportunities, including in the automotive market, which Maxwell sees as having the largest growth potential for the Company as the need for high power and rapid response energy storage and power delivery solutions increase with the spread of hybrid electric vehicles and autonomous driving. For example, in 2018, Maxwell partnered with Zhejiang Geely Holding Corp. ("Geely"), the parent company for brands such as Volvo and Geely Auto, which focuses on integration of state-of-the-art ultracapacitors and advanced power conversion electronics into its global automotive vehicle lineup in support of their fleet electrification strategy. Geely will include Maxwell's ultracapacitor-based peak power system into its five model year 2020 mild-hybrid and plug-in hybrid vehicles.

34. According to the Annual Report, Maxwell has also positioned itself for growth in the grid energy storage, light rail infrastructure and wind markets. In the grid energy storage market, Maxwell has experienced increased customer levels and in 2018 engaged in a subsystem design-in with Siemens Transmission Solutions to deliver economical, fast responding, long life grid voltage

and frequency support solutions. Maxwell's grid energy storage systems are an integral design element in the Siemens' SVC PLUS FS that will provide system inertia in the form of fast, active power injection. In connection with China's light rail infrastructure and wind market, Maxwell has partnered with China Railway Rolling Rock Corporation to develop lithium-ion capacitor based light rail on-board systems and looks to continue ongoing development of offshore wind resources in the country.

35. On August 6, 2018, Maxwell reported its financial results for the second quarter of 2018, including total revenue of $29.5 million, compared to $28.4 million of total revenue in the first quarter of 2018. Despite a challenging market due to recent U.S. tariffs on China imports and unclear U.S. tax incentive policy, defendant Fink remained positive about the Company's future, stating:

> Despite this, we believe that the long-term fundamentals of our business have not changed. End demand in the markets we serve is growing, we continue to make excellent progress with our dry battery electrode technology development and strategic partnership discussions, and our overall strategy is playing out as intended. . . . We continue to make progress in all our energy storage target markets and are well positioned for long-term growth. Although we are facing short-term headwinds, the core energy storage product line is stable and market indicators bode well for mid- to long-term robust demand for our high voltage capacitor products.

36. Thereafter, on November 6, 2018, Maxwell reported its financial results for the third quarter of 2018, including total revenue of $33.7 million, compared to $29.5 million in the second quarter of 2018. For the third quarter, energy storage revenue increased to $26.5 million compared to $22.7 million for the second quarter of 2018. Defendant Fink commented on the successful third quarter, stating:

> In Q3, we experienced sequential revenue growth driven by energy storage product sales in the wind and non-China bus markets, enhanced our position in the grid market with a new partnership, and our overall pipeline continues to grow. Additionally, testing of our dry battery electrode technology is progressing to plan and we are making headway with potential partners, which should change the long-term dynamics of our business. Long-term, we remain optimistic about our competitive position and our ability to capitalize on the global opportunities ahead of us[.]

37. Most recently, on February 14, 2019, Maxwell reported total year end revenue for 2018 of $90.4 million, compared to $87.7 million for the 2017 year end.

The Sale Process Leading to the Proposed Transaction

38. In mid-2018, Tesla and Maxwell began a series of discussions in connection with a potential strategic commercial relationship.

39. On December 12, 2018, Brian Scelfo ("Scelfo") of Tesla contacted defendant Fink to convey Tesla's interest in a potential acquisition of Maxwell rather than pursuing a strategic commercial relationship.

40. The next day, the Board met and discussed whether to engage in discussions regarding a potential sale of Maxwell and in particular with entering into negotiations with Tesla, including whether and how to respond to any proposal that may be received from Tesla and whether to contact additional parties to gauge their interest in acquiring Maxwell. The Board authorized Barclays to work with defendant Fink and his executive management team, on exploring a potential sale of Maxwell pursuant to the terms of an existing engagement agreement that had previously been entered into between Maxwell and Barclays in January 2017, including authorization for management to begin engagement with Tesla to explore Tesla's interest in an acquisition.

41. Following the December 13, 2018 Board meeting, defendant Fink received a call from Scelfo, who expressed Tesla's interest in conducting due diligence for a potential transaction. On December 14, 2018, Tesla and Maxwell entered into the mutual nondisclosure agreement related to a possible negotiated transaction between Tesla and Maxwell.

42. On December 14, 2018, Tesla delivered a non-binding letter of intent to defendant Fink proposing to acquire 100% of the outstanding shares of capital stock of Maxwell for a per share purchase price of $2.35, paid in shares of Tesla stock based on an exchange ratio to be fixed at the time of signing definitive transaction documents.

43. On December 18, 2018, the Board met and authorized defendant Fink and Company management to continue discussions with Tesla while seeking a higher per share offer price.

44. On December 20, 2018, Scelfo, on behalf of Tesla, delivered a revised non-binding letter of intent to defendant Fink to acquire 100% of the outstanding shares of capital stock of Maxwell for a per share purchase price of $3.10.

45. Between December 23 and December 28, 2018, defendant Fink had numerous email correspondences with Scelfo in order to conduct further diligence and discuss the benefits of a potential transaction. During this period, Scelfo conveyed that Tesla was no longer interested in a potential strategic commercial arrangement with Maxwell and it would move in a different direction should Maxwell and Tesla be unable to reach an agreement regarding a potential acquisition of the entire capital stock of Maxwell.

46. Following a December 28, 2018 Board meeting, defendant Fink contacted Scelfo and indicated to Scelfo that it was the Board's view that it would likely require at least $5.75—$6.00 per share price to gain the support of Maxwell's largest institutional investors.

47. On January 7, 2019, Scelfo, on behalf of Tesla, delivered a revised non-binding letter of intent to defendant Fink to acquire 100% of the outstanding shares of capital stock of Maxwell for a per share purchase price of $4.35.

48. On January 14, 2019, the Strategic Transaction Committee of the Board (the "Strategic Transaction Committee") met and discussed a list of potential alternative buyers of Maxwell jointly identified by Barclays and members of Maxwell management. Two days later, the Strategic Transaction Committee met and authorized Barclays to proceed with contacting all potential parties that had been identified, other than two companies that would be contacted by a member of the Board. None of the parties submitted a bid for the Company.

49. Also on January 16, 2019, Maxwell provided a written response to Tesla proposing a counteroffer of $4.75 per share and further indicating that if Tesla shares were provided as consideration in the transaction, Maxwell would request a pricing formula that gave Maxwell shareholders fixed value for their Maxwell shares to account for any fluctuations in the Tesla trading price between signing and closing.

50. On January 18, 2019, Scelfo, on behalf of Tesla, delivered a revised non-binding letter of intent to defendant Fink for an acquisition of 100% of the outstanding shares of capital stock of Maxwell for $4.75.

51. On January 23, 2019, the Board met and approved Maxwell entering into a non-binding letter of intent and exclusivity agreement with Tesla. In addition, based upon the potential transaction and updated information related to sales and customer orders and forecasts, the Board approved the financial projections extended out to 2025 prepared by Maxwell's management, which were also updated to take into account recent developments, including the removal of any potential revenue based on a potential commercial arrangement with Tesla and the addition of forecasted revenue amounts from potential alternative automotive manufacturers.

52. Later that day, Maxwell and Tesla entered into the non-binding letter of intent and an exclusivity and non-solicitation agreement with Tesla providing for exclusive negotiations through February 21, 2019.

53. In the afternoon of February 3, 2019, the Strategic Transaction Committee held a special meeting and Barclays presented its financial analyses underlying its fairness opinion. The Strategic Transaction Committee recommended, among other things, that the Board enter into the Proposed Transaction.

54. Immediately following the meeting of the Strategic Transaction Committee, the Board held a special meeting and Barclays delivered its fairness opinion and the Board determined to enter into the Proposed Transaction.

55. Thereafter, on February 3, 2019, Maxwell and Tesla signed the Merger Agreement and, before the open of markets on February 4, 2019, Maxwell issued a press release announcing the Proposed Transaction that stated, in relevant part:

> **San Diego (February 4, 2019)**—Maxwell Technologies, Inc. (Nasdaq: MXWL or the "Company" or "Maxwell"), a leading developer and manufacturer of energy solutions, today announced it has entered into a definitive agreement (the "Merger Agreement") to be acquired by Tesla, Inc. (Nasdaq: TSLA or "Tesla"). Tesla will commence an all stock exchange offer for all the issued and outstanding shares of the Company (the "Offer"), after which the Company will be merged with a Tesla subsidiary and become a wholly owned subsidiary of Tesla.
>
> 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 common stock as reported on the NASDAQ Global Select Market for the five consecutive trading days preceding the expiration of the Offer, and which is subject to a floor that has been set at 80% of a volume weighted average price of Tesla common stock calculated prior to signing.
>
> The closing of the transaction is subject to the successful tender and exchange of shares, certain regulatory approvals and customary closing conditions. These terms, along with additional terms and conditions of the transaction, can be found 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.
>
> While there can be no assurances on the closing date, the Company anticipates that the merger will be consummated in the second quarter of 2019, or shortly thereafter, should all conditions be met and subject to the timing of the aforementioned approvals.
>
> The Merger Agreement and the consummation of the Offer, merger and other transactions contemplated in the Merger Agreement have been unanimously approved by Maxwell's board of directors, all of whom recommend to the Company's stockholders that they accept the Offer and tender their Maxwell 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.

"We are very excited with today's announcement that Tesla has agreed to acquire Maxwell. Tesla is a well-respected and world-class innovator that shares a common goal of building a more sustainable future," said Dr. Franz Fink, President and Chief Executive Officer of Maxwell. "We believe this transaction 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.

Insiders' Interests in the Proposed Transaction

56. Maxwell insiders are the primary beneficiaries of the Proposed Transaction, not the Company's public stockholders. The Board and the Company's executive officers are conflicted because they will have secured unique benefits for themselves from the Proposed Transaction not available to Plaintiff and the public stockholders of Maxwell.

57. Maxwell insiders stand to reap substantial financial benefits for securing the deal with Tesla. For example, the following table sets forth the expected value of each of Maxwell's non-employee directors' options and time-based RSUs as of February 11, 2019:

Name	Vested Maxwell Options (#)(1)	Unvested Maxwell Options (#)(2)	Value of Unvested 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

58. Further, if they are terminated in connection with the Proposed Transaction, Maxwell's named executive officers are set to receive substantial cash severance payments in the form of golden parachute compensation, as set forth in the following table:

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

The Recommendation Statement Contains Numerous Material Misstatements or Omissions

59. The defendants filed a materially incomplete and misleading Recommendation Statement with the SEC and disseminated it to Maxwell's stockholders. The Recommendation Statement misrepresents or omits material information that is necessary for the Company's stockholders to make an informed decision whether to tender their shares in favor of the Proposed Transaction.

60. Specifically, as set forth below, the Recommendation Statement fails to provide Company stockholders with material information or provides them with materially misleading information concerning: (i) Maxwell management's financial projections; (ii) potential conflicts of interest faced by the Company's financial advisor, Barclays, and Company insiders; and (iii) the data and inputs underlying the financial valuation analyses that support the fairness opinion provided by Barclays. Accordingly, Maxwell stockholders are being asked to make a tender decision in connection with the Proposed Transaction without all material information at their disposal.

Material Omissions Concerning Maxwell's Financial Projections

61. The Recommendation Statement is materially deficient because it fails to disclose material information relating to the Company's intrinsic value and prospects going forward.

62. The Recommendation Statement sets forth that in connection with its 2019 long-range plan process, Maxwell's management prepared financial projections for calendar years 2019 through 2023, which were reviewed by the Board. Recommendation Statement at 30.

63. The Recommendation Statement fails to disclose, however, (i) the specific timeframe the projections for the calendar years 2019 to 2023 prepared in connection with Maxwell's 2019 long-range plan process were created and reviewed with the Board; (ii) the unlevered free cash flow figures for this set of projections; and (iii) whether these projections assumed the refinancing of Maxwell's $46 million of Senior Convertible Notes due in 2022.

64. Additionally, with respect to the updated projections which were extended for the calendar years 2024 to 2025, the Recommendation Statement fails to disclose the rationale for the removal of any potential revenue based on a potential commercial arrangement with Tesla, and quantification of the revenue attributable to a potential commercial arrangement with Tesla that was removed from the updated projections.

65. Without this omitted projection information, Maxwell stockholders cannot adequately assess the revisions to the Company's projections and whether the revisions were proper or were engineered to depress the future financial outlook of the Company in order to make the Offer Price appear more favorable.

66. The omission of this information renders the statements in the "Projected Financial Information" section of the Recommendation Statement false and/or materially misleading in contravention of the Exchange Act.

Material Omissions Concerning Barclays' and Company Insiders' Potential Conflicts of Interest

67. The Recommendation Statement also fails to disclose material information concerning potential conflicts of interest.

68. The Recommendation Statement fails to disclose material information concerning the fees received by Barclays for any past work performed for the Company or Tesla and its affiliates.

69. For example, with respect to Barclays, the Recommendation Statement sets forth:

> Barclays is acting as financial advisor to Maxwell in connection with the proposed transaction. As compensation for its services in connection with the proposed transaction, Maxwell has paid Barclays an opinion fee of $500,000 and has agreed to pay Barclays an additional transaction fee, currently estimated at approximately $4.37 million, which will be payable by Maxwell upon consummation of the transactions contemplated by the merger agreement. In addition, Maxwell has agreed to reimburse Barclays for its reasonable out-of-pocket expenses incurred in connection with the proposed transaction and to indemnify Barclays for certain liabilities that may arise out of its engagement by Maxwell and the rendering of Barclays' opinion. Barclays has performed various investment banking and financial services for Maxwell, Tesla and their affiliates in the past, and expect to perform such services in the future, and have received, and expect to receive, customary fees for such services. Specifically, in the past two years, Barclays has performed the following investment banking and financial services: (i) acted as bookrunner in connection with Tesla's offering of $1.0 billion convertible notes in March 2017; (ii) acted as an underwriter in connection with Tesla's $402.5 million follow-on offering in March 2017; (iii) acted as financial advisor in connection with the Maxwell's Defense Advisory Settlement entered into in April 2017; (iv) acted as joint bookrunner in connection with Tesla's inaugural high yield offering of $1.80 billion senior notes due 2025 in August 2017; (v) acted as an underwriter in connection with the Maxwell's $46.0 million senior unsecured convertible notes offering in October 2017; (vi) acted as an underwriter in connection with the Maxwell's $23.0 million follow-on offering in August 2018; and (vii) acted as financial advisor in connection with the Maxwell's divestiture of its high voltage capacitors business in December 2018. In addition, (i) Barclays is currently engaged by the Maxwell to advise on certain corporate defensive advisory matters should they arise and we would receive customary fees in connection therewith; (ii) an affiliate of Barclays acts as a lender under Tesla's $1.2 billion revolving credit facility which expires in June 2020; (iii) in addition to the lending relationship with Tesla specified in the preceding clause, an affiliate of Barclays also acts as a lender in connection with two other facilities with different entities affiliated with Tesla, both of which expire in August 2019; and (iv) Barclays remains in contact with Tesla concerning the possible future provision of investment banking and financial services.

Recommendation Statement at 39. The Recommendation Statement, however, fails to disclose the fees Barclays received in connection with the services it performed for Maxwell, Tesla and entities affiliated with Tesla.

70. Full disclosure of investment banker compensation and all potential conflicts is required due to the central role played by investment banks in the evaluation, exploration, selection, and implementation of strategic alternatives.

71. The Recommendation Statement also fails to disclose material information concerning the potential conflicts of interest faced by Maxwell insiders.

72. The Recommendation Statement fails to disclose whether any Maxwell executives have secured positions with the combined company as well as the details of any employment -related discussions and negotiations that occurred between Tesla and Maxwell executive officers, including who participated in all such communications, when they occurred and their content. The Recommendation Statement further fails to disclose whether any of Tesla's prior proposals or indications of interest mentioned management retention in the combined company or the purchase of or participation in the equity of the surviving corporation.

73. Communications regarding post-transaction employment during the negotiation of the underlying transaction must be disclosed to stockholders. This information is necessary for stockholders to understand potential conflicts of interest of management and the Board, as that information provides illumination concerning motivations that would prevent fiduciaries from acting solely in the best interests of the Company's stockholders.

74. The omission of this information renders the statements in the "Background of the Offer and the Merger" section of the Recommendation Statement false and/or materially misleading in contravention of the Exchange Act.

Material Omissions Concerning Barclays' Financial Analyses

75. The Recommendation Statement describes Barclays' fairness opinion and the various valuation analyses performed in support of its opinion. However, the description of Barclays' fairness opinion and analyses fails to include key inputs and assumptions underlying the analyses. Without this information, as described below, Maxwell's public stockholders are unable to fully understand these analyses and, thus, are unable to determine what weight, if any, to place on Barclays' fairness opinion in determining whether to tender their shares in favor of the Proposed Transaction. This omitted information, if disclosed, would significantly alter the total mix of information available to Maxwell's stockholders.

76. With respect to Barclays' *Discounted Cash Flow Analysis ("DCF")*, the Recommendation Statement fails to disclose: (i) quantification of the inputs and the assumptions underlying the discount rates ranging from 14.0% to 18.0%; (ii) what financial metric Barclays applied perpetuity growth rates to in order to derive the residual value of Maxwell at the end of the forecast period, or "terminal value"; (iii) the implied terminal multiples resulting from the analysis; and (iv) quantification of Maxwell's net debt as of December 31, 2018, used by Barclays in its analysis.

77. With respect to Barclays' *Selected Comparable Company Analysis* and *Selected Precedent Transaction Analysis*, the Recommendation Statement fails to disclose the individual multiples and financial metrics for the companies and transactions observed by Barclays in its respective analyses.

78. When a banker's endorsement of the fairness of a transaction is touted to stockholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed.

79. The omission of this information renders the statements in the "Opinion of Maxwell's Financial Advisor" section of the Recommendation Statement false and/or materially misleading in contravention of the Exchange Act.

80. The Individual Defendants were aware of their duty to disclose the above-referenced omitted information and acted negligently (if not deliberately) in failing to include this information in the Recommendation Statement. Absent disclosure of the foregoing material information prior to the expiration of the Tender Offer, Plaintiff and the other members of the Class will be unable to make a fully-informed tender decision in connection with the Proposed Transaction and are thus threatened with irreparable harm warranting the injunctive relief sought herein.

CLAIMS FOR RELIEF

COUNT I

Class Claims Against All Defendants for
Violations of Section 14(e) of the Exchange Act

81. Plaintiff repeats all previous allegations as if set forth in full.

82. Defendants violated Section 14(e) of the Exchange Act by issuing the Recommendation Statement in which they made untrue statements of material facts or failed to state all material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or engaged in deceptive or manipulative acts or practices, in connection with the Tender Offer.

83. Defendants knew that Plaintiff would rely upon their statements in the Recommendation Statement in determining whether to tender his shares pursuant to the Tender Offer.

84. As a direct and proximate result of these defendants' unlawful course of conduct in violation of Section 14(e) of the Exchange Act, absent injunctive relief from the Court, Plaintiff has sustained and will continue to sustain irreparable injury by being denied the opportunity to make an informed decision in deciding whether or not to tender his shares.

COUNT II

Class Claims Against the Individual Defendants for
Violation of Section 20(a) of the Exchange Act

85. Plaintiff repeats all previous allegations as if set forth in full.

86. The Individual Defendants acted as controlling persons of Maxwell within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers or directors of Maxwell and participation in or awareness of the Company's operations or intimate knowledge of the false statements contained in the Recommendation Statement filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading.

87. Each of the Individual Defendants was provided with or had unlimited access to copies of the Recommendation Statement and other statements alleged by Plaintiff to be misleading prior to or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

88. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same. The Recommendation Statement at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Transaction. They were, thus, directly involved in the making of this document.

89. In addition, as the Recommendation Statement sets forth at length, and as described herein, the Individual Defendants were each involved in negotiating, reviewing, and approving the Proposed Transaction. The Recommendation Statement purports to describe the various issues and information that they reviewed and considered — descriptions which had input from the Individual Defendants.

90. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

91. Plaintiff and the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury that defendants' actions threaten to inflict.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and preliminary and permanent relief, including injunctive relief, in his favor on behalf of Maxwell, and against defendants, as follows:

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

B. Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;

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

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

E. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all claims and issues so triable.

Dated: March 5, 2019

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Exhibit (a)(5)(I)

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

JOHN SOLAK, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. MAXWELL TECHNOLOGIES, INC., RICHARD BERGMAN, STEVE BILODEAU, JÖRG BUCHHEIM, FRANZ J. FINK, BURKHARD GOESCHEL, ILYA GOLUBOVICH, JOHN MUTCH, TESLA, INC., and CAMBRIA ACQUISITION CORP., Defendants.	)	Case No. __________ JURY TRIAL DEMANDED CLASS ACTION

COMPLAINT FOR VIOLATION OF THE SECURITIES EXCHANGE ACT OF 1934

Plaintiff John Solak ("Plaintiff"), by his undersigned attorneys, for this complaint against defendants, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, 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") alleging violations of Sections 14(a) and 20(a) of the Securities and Exchange Act of 1934 (the "Exchange Act") and for breaches of fiduciary duty.

2. The action arises out of a proposed tender offer, which was announced on February 4, 2019, pursuant to which Maxwell will be acquired by Tesla, Inc. ("Parent") and Cambria Acquisition Corporation ("Merger Sub," and together with Parent, "Tesla") in a deal valued at approximately $218 million (the "Proposed Transaction"). The tender offer is set to expire on March 19, 2019 at 11:59pm and in a stock for stock exchange.

3. The terms of the Proposed Transaction were disclosed to stockholders in a February 4, 2019, filing with the Securities and Exchange Commission ("SEC") on Form 8-K attaching the definitive Agreement and Plan of Merger (the "Merger Agreement").

4. The Merger Agreement provides that Maxwell will become an indirect wholly-owned subsidiary of Tesla, and Maxwell stockholders will receive shares of Tesla common stock valued at approximately $4.50 for each share of Maxwell common stock they own. The Merger Agreement further provides that the exact valuation will be based upon the quotient obtained by dividing $4.75 by a volume weighted average price of one share of Tesla common stock for the five consecutive trading days preceding the expiration of the tender offer period, rounded to four decimal places.

5. As required under the securities laws, on February 20, 2019, Maxwell filed a Solicitation/Recommendation Statement on Schedule 14D-9 (the "14D-9") with the SEC in support of the Proposed Transaction, which included certain financial information concerning the Company and the process leading up to the Proposed Transaction.

6. On the same day, Tesla filed a Registration Statement on Schedule S-4 (the "S-4," together with the "14D-9" the "Proxy Materials") with the SEC in support of the Proposed Transaction.

7. The Proposed Transaction is unfair to Maxwell shareholders for myriad reasons. First, the 14D-9 details how the "sales process" was done hastily, and that the Board was focused on selling the Company only to Tesla.

8. Second, traditional fiduciary measures – such as a special committee and market checks – were undertaken only after Tesla had made several bids and went so far as to threaten to end its customer relationship with Maxwell should the Company not accept its offer to purchase it on Tesla's terms.

9. Third, it appears that the Proposed Transaction was structured to benefit the Board and senior management by allowing them to receive significant and immediate benefits. Certain Directors and other insiders will be the recipients of lucrative change-in-control agreements, triggered upon the termination of their employment as a consequence of the consummation of the Proposed Transaction.

10. Finally, Defendants caused to be filed the materially deficient Proxy Materials on February 20, 2019 with the SEC in an effort to solicit stockholders to tender their Maxwell shares in favor of the Proposed Transaction.

11. As detailed below, the Proxy Materials omit and/or misrepresent material information concerning, among other things: (a) the sales process and in particular certain conflicts of interest for management; (b) the financial projections for Maxwell and Tesla, provided by Maxwell and Tesla to the Company's financial advisor, Barclays Capital, Inc. ("Barclays") for use in its financial analyses; and (c) the data and inputs underlying the financial valuation analyses that purport to support the fairness opinions provided by Barclays.

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

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

JURISDICTION AND VENUE

14. This Court has jurisdiction over all claims asserted herein pursuant to Section 27 of the Exchange Act because the claims asserted herein arise under Sections 14(e), 14(d), and 20(a) of the Exchange Act and Rule 14a-9.

15. This Court has jurisdiction over defendants because each defendant is either a corporation that conducts business in and maintains operations within this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

16. Venue is proper under 28 U.S.C. § 1391 because a substantial portion of the transactions and wrongs complained of herein occurred in this District.

PARTIES

17. Plaintiff is, and has been continuously throughout all times relevant hereto, the owner of Maxwell common stock.

18. Defendant Maxwell is a Delaware corporation and maintains its principal executive offices at 3888 Calle Fortunada, San Diego, California 92123. Maxwell's common stock is traded on the NASDAQ Global Select Market under the ticker symbol "MXWL." Maxwell is a party to the Merger Agreement.

19. Defendant Richard Bergman a director of the Company.

20. Defendant Steve Bilodeau is Chairman of the Board of the Company.

21. Defendant Jörg Buchheim is a director of the Company.

22. Defendant Franz J. Fink is a director of the Company and also serves as the President and Chief Executive Officer of the Company.

23. Defendant Burkhard Goeschel is a director of the Company.

24. Defendant Ilya Golubovich is a director of the Company.

25. Defendant John Mutch is a director of the Company.

26. The defendants identified in paragraphs 19 through 25 are collectively referred to herein as the "Individual Defendants" or the "Board."

27. Defendant Parent is a Delaware corporation and a party to the Merger Agreement. Parent designs, develops, manufactures, and sells electric vehicles, and energy generation and storage systems in the United States, China, Norway, and internationally. Parent's common stock is traded on the NasdaqGS under the ticker symbol "TSLA."

28. Defendant Merger Sub is a Delaware corporation, a wholly-owned subsidiary of Parent, and a party to the Merger Agreement.

CLASS ACTION ALLEGATIONS

29. Plaintiff brings this action as a class action on behalf of himself and the other public stockholders of Maxwell (the "Class"). Excluded from the Class are defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

30. This action is properly maintainable as a class action.

31. The Class is so numerous that joinder of all members is impracticable. As of January 31, 2019, there were approximately 46,008,549 shares of Maxwell common stock outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout the country.

32. Questions of law and fact are common to the Class, including, among others, whether defendants will irreparably harm Plaintiff and the other members of the Class if defendants' conduct complained of herein continues.

33. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff has the same interests as the other members of the Class. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

34. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for defendants, or adjudications that would, as a practical matter, be dispositive of the interests of individual members of the Class who are not parties to the adjudications or would substantially impair or impede those non-party Class members' ability to protect their interests.

35. Defendants have acted, or refused to act, on grounds generally applicable to the Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on behalf of the Class is appropriate.

SUBSTANTIVE ALLEGATIONS

Background of the Company and the Proposed Transaction

36. Maxwell is a global leader in the development and manufacture of innovative, cost-effective energy and power delivery solutions.

37. The Company has developed and transformed its patented, proprietary, and fundamental dry electrode manufacturing technology that it has historically used to make ultracapacitors to create a breakthrough technology that can be applied to the manufacturing of batteries.

38. Maxwell's ultracapacitor products provide safe and reliable power solutions for applications in consumer and industrial electronics, transportation, renewable energy, and information technology.

The Company is Poised for Growth

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

40. CEO Defendant Fink noted on the Company's positive financial results as follows: "In Q3, we experienced sequential revenue growth driven by energy storage product sales in the wind and non-China bus markets, enhanced our position in the grid market with a new partnership, and our overall pipeline continues to grow."

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

42. It was recently reported in a *Seeking Alpha* article dated February 5, 2019 [1] that the Company is on the cutting edge of new technology – technology especially attractive to Tesla. Specifically, the Company reportedly it is able to deliver e-active suspensions – unique suspension system coveted in the industry. The following was stated on the Nov. 6 earnings call associated with the earnings release concerning the suspension system:

1 *See* https://seekingalpha.com/article/4238408-closer-look-tesla-maxwell-technologies-deal.

> We continue to see increasing interest in Maxwell's range of automotive solutions primarily in peak power, autonomous driving and E-active suspension applications. Each of these are large market opportunity for us, and with the technology and solutions we are developing, we believe we have a strong offering and competitive advantage.[2]

43. The Company is also making important advancements in dry battery technology, which would allow Tesla to manufacture batteries in a more environmental-friendly way with increased energy density, according to the *Seeking Alpha* story. As stated during the earnings call:

> Concurrently we are activity pursuing additional avenues to enhance our balance sheet and our cash position, including a specific focus on non-dilutive measures. Despite some of the near-term headwinds we are facing, we do have significant momentum behind us. Our technology is evolving rapidly. We are in advanced discussions with some major OEM players for our dry battery electrode technology and our pipeline across all segments is expanding. Our long-term position in my opinion is stronger than it was a year ago or even last quarter.

44. The Company also has a relatively sizeable cash position that Tesla will receive in exchange for equity. As *Seeking Alpha* points out, "[t]he economic reality here is that the purchase price of $218 million is only $149 million. Even better the price is paid with its rich equity while it receives actual hard U.S. dollars."

45. Despite this positive trajectory, on February 3, 2019, Maxwell's Board caused the Company to enter into the Merger Agreement with Tesla.

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2 See https://seekingalpha.com/article/4219121-maxwells-mxwl-ceo-dr-franz-fink-q3-2018-results-earnings-call-transcript?part=single.

The Flawed Sales Process

46. Pursuant to the terms of the Merger Agreement, Merger Sub commenced the Tender Offer to acquire each issued and outstanding share of Maxwell common stock. 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 common stock as reported on the NASDAQ Global Select Market for the five consecutive trading days preceding the expiration of the Tender Offer.

47. According to the press release announcing the Proposed Transaction:

> Maxwell Technologies, Inc. (Nasdaq: MXWL or the "Company" or "Maxwell"), a leading developer and manufacturer of energy solutions, today announced it has entered into a definitive agreement (the "Merger Agreement") to be acquired by Tesla, Inc. (Nasdaq: TSLA or "Tesla"). Tesla will commence an all stock exchange offer for all the issued and outstanding shares of the Company (the "Offer"), after which the Company will be merged with a Tesla subsidiary and become a wholly owned subsidiary of Tesla.
>
> 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 common stock as reported on the NASDAQ Global Select Market for the five consecutive trading days preceding the expiration of the Offer, and which is subject to a floor that has been set at 80% of a volume weighted average price of Tesla common stock calculated prior to signing.
>
> The closing of the transaction is subject to the successful tender and exchange of shares, certain regulatory approvals and customary closing conditions. These terms, along with additional terms and conditions of the transaction, can be found 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.
>
> While there can be no assurances on the closing date, the Company anticipates that the merger will be consummated in the second quarter of 2019, or shortly thereafter, should all conditions be met and subject to the timing of the aforementioned approvals.
>
> The Merger Agreement and the consummation of the Offer, merger and other transactions contemplated in the Merger Agreement have been unanimously approved by Maxwell's board of directors, all of whom recommend to the Company's stockholders that they accept the Offer and tender their Maxwell 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.

The Solicitation Statement Omits Material Information, Rendering It False and Misleading

48. Defendants filed a Solicitation Statement with the SEC in connection with the Proposed Transaction.

49. As set forth below, the Solicitation Statement omits material information with respect to the Proposed Transaction, which renders the Solicitation Statement false and misleading.

50. The Solicitation Statement omits material information regarding the Company's and Tesla's financial projections, and the analyses performed by Barclays, the Company's financial advisor in connection with the Proposed Transaction.

51. With respect to the Company's financial projections, the Solicitation Statement fails to disclose, for each set of projections: (i) all line items used to calculate EBIT and Adjusted EBITDA; (ii) potential revenue based on a potential commercial arrangement with Tesla; (iii) forecasted amounts for potential alternative automotive manufacturers; and (iv) a reconciliation of all non-GAAP to GAAP metrics.

52. The Solicitation Statement fails to disclose Tesla's financial projections.

53. With respect Barclays' Selected Comparable Company Analysis, the Solicitation Statement fails to disclose the individual multiples and financial metrics for the companies observed by Barclays in the analysis.

54. With respect to Barclays' Selected Precedent Transaction Analysis, the Solicitation Statement fails to disclose the individual multiples and financial metrics for the transactions observed by Barclays in the analysis.

55. With respect to Barclays' Discounted Cash Flow Analysis, the Solicitation Statement fails to disclose: (i) Maxwell's projected after-tax unlevered free cash flows that were used by Barclays in the analysis; (ii) the terminal value of Maxwell; (iii) the individual inputs and assumptions underlying the range of discount rates of 14.0% to 18.0% and the range of perpetuity growth rates of 3% to 5%; (iv) estimated net debt; and (v) the fully diluted number of shares of Maxwell.

56. With respect to Barclays' Transaction Premium Analysis, the Solicitation Statement fails to disclose: (i) the transactions observed by Barclays in the analysis; and (ii) the premiums paid in the transactions.

57. The disclosure of projected financial information is material because it provides stockholders with a basis to project the future financial performance of a company, and allows stockholders to better understand the financial analyses performed by the company's financial advisor in support of its fairness opinion. Moreover, when a banker's endorsement of the fairness of a transaction is touted to shareholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed.

58. The Solicitation Statement also omits material information regarding potential conflicts of interest of Barclays.

59. The Solicitation Statement fails to disclose the amount of compensation Barclays received for the past services that it provided to the parties to the Merger Agreement and their affiliates.

60. The Solicitation Statement fails to disclose the anticipated fees that Barclays will receive for its current engagement to advise the Company "on certain corporate defensive advisory matters should they arise."

61. The Solicitation Statement fails to disclose the anticipated fees that Barclays' affiliate will receive for acting as a lender under Parent's $1.2 billion revolving credit facility that expires in June 2020, as well as for acting as a lender in connection with two other facilities with different entities affiliated with Parent, both of which expire in August 2019.

62. Full disclosure of investment banker compensation and all potential conflicts is required due to the central role played by investment banks in the evaluation, exploration, selection, and implementation of strategic alternatives.

63. Additionally, the Solicitation Statement fails to disclose whether the Company entered into any confidentiality agreements that contained standstill and/or "don't ask, don't waive" provisions that are or were preventing the counterparties from submitting superior offers to acquire the Company.

64. Without this information, stockholders may have the mistaken belief that, if these potentially interested parties wished to come forward with a superior offer, they are or were permitted to do so, when in fact they are or were contractually prohibited from doing so.

65. The omission of the above-referenced material information renders the Solicitation Statement false and misleading, including, *inter alia*, the following section of the Solicitation Statement: The Solicitation or Recommendation.

66. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to the Company's stockholders.

COUNT I

(Claim for Violation of Section 14(e) of the Exchange Act Against Defendants)

67. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

68. Section 14(e) of the Exchange Act states, in relevant part, that:

> It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading . . . in connection with any tender offer or request or invitation for tenders[.]

69. Defendants disseminated the misleading Solicitation Statement, which contained statements that, in violation of Section 14(e) of the Exchange Act, in light of the circumstances under which they were made, omitted to state material facts necessary to make the statements therein not misleading.

70. The Solicitation Statement was prepared, reviewed, and/or disseminated by defendants.

71. The Solicitation Statement misrepresented and/or omitted material facts in connection with the Proposed Transaction as set forth above.

72. By virtue of their positions within the Company and/or roles in the process and the preparation of the Solicitation Statement, defendants were aware of this information and their duty to disclose this information in the Solicitation Statement.

73. The omissions in the Solicitation Statement are material in that a reasonable shareholder will consider them important in deciding whether to tender their shares in connection with the Proposed Transaction. In addition, a reasonable investor will view a full and accurate disclosure as significantly altering the total mix of information made available.

74. Defendants knowingly or with deliberate recklessness omitted the material information identified above in the Solicitation Statement, causing statements therein to be materially incomplete and misleading.

75. By reason of the foregoing, defendants violated Section 14(e) of the Exchange Act.

76. Because of the false and misleading statements in the Solicitation Statement, Plaintiff and the Class are threatened with irreparable harm.

77. Plaintiff and the Class have no adequate remedy at law.

COUNT II

(Claim for Violation of 14(d) of the Exchange Act Against Defendants)

78. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

79. Section 14(d)(4) of the Exchange Act states:

> Any solicitation or recommendation to the holders of such a security to accept or reject a tender offer or request or invitation for tenders shall be made in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

80. Rule 14d-9(d) states, in relevant part:

> Any solicitation or recommendation to holders of a class of securities referred to in section 14(d)(1) of the Act with respect to a tender offer for such securities shall include the name of the person making such solicitation or recommendation and the information required by Items 1 through 8 of Schedule 14D-9 (§ 240.14d-101) or a fair and adequate summary thereof[.]

Item 8 requires that directors must "furnish such additional information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading."

81. The Solicitation Statement violates Section 14(d)(4) and Rule 14d-9 because it omits the material facts set forth above, which renders the Solicitation Statement false and/or misleading.

82. Defendants knowingly or with deliberate recklessness omitted the material information set forth above, causing statements therein to be materially incomplete and misleading.

83. The omissions in the Solicitation Statement are material to Plaintiff and the Class, and they will be deprived of their entitlement to make a fully informed decision with respect to the Proposed Transaction if such misrepresentations and omissions are not corrected prior to the expiration of the tender offer.

84. Plaintiff and the Class have no adequate remedy at law.

COUNT III

(Claim for Violation of Section 20(a) of the Exchange Act Against the Individual Defendants and Tesla)

85. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

86. The Individual Defendants and Tesla acted as controlling persons of Maxwell within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as directors of Maxwell and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the Solicitation Statement filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that Plaintiff contends are false and misleading.

87. Each of the Individual Defendants and Tesla was provided with or had unlimited access to copies of the Solicitation Statement alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause them to be corrected.

88. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control and influence the particular transactions giving rise to the violations as alleged herein, and exercised the same. The Solicitation Statement contains the unanimous recommendation of the Individual Defendants to approve the Proposed Transaction. They were thus directly connected with and involved in the making of the Solicitation Statement.

89. Tesla also had direct supervisory control over the composition of the Solicitation Statement and the information disclosed therein, as well as the information that was omitted and/or misrepresented in the Solicitation Statement.

90. By virtue of the foregoing, the Individual Defendants and Tesla violated Section 20(a) of the Exchange Act.

91. As set forth above, the Individual Defendants and Tesla had the ability to exercise control over and did control a person or persons who have each violated Section 14(e) of the Exchange Act and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the Exchange Act.

92. As a direct and proximate result of defendants' conduct, Plaintiff and the Class are threatened with irreparable harm.

93. Plaintiff and the Class have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. Enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;

B. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages;

C. Directing the Individual Defendants to file a Solicitation Statement that does not contain any untrue statements of material fact and that states all material facts required in it or necessary to make the statements contained therein not misleading;

D. Declaring that defendants violated Sections 14(e), 14(d), and 20(a) of the Exchange Act, as well as Rule 14a-9 promulgated thereunder;

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

F. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: March 4, 2019

RIGRODSKY & LONG, P.A.

By: */s/ Gina M. Serra*

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PLAINTIFF'S CERTIFICATION

John Solak ("Plaintiff") declares 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., securities during the Class Period specified in the Complaint are as follows:

Date	# of Shares Purchased	# of Shares Sold	Price
1/16/19	50	0	$2.85

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 below:]

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 1st day of March, 2019.

/s/ John Solak
John Solak

EFiled: Mar 04 2019 03:40PM EST
Transaction ID 63022266
Case No. 2019-0176-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DAVIS RODDEN, on behalf of himself and all other similarly situated stockholders of MAXWELL TECHNOLOGIES, INC.,

Plaintiff,

v.

C.A. No. ___________

STEVEN BILODEAU, RICHARD BERGMAN, JORG BUCHHEIM, FRANZ J. FINK, BURKHARD GOESCHEL, ILYA GOLUBOVICH and JOHN MUTCH,

Defendants.

VERIFIED CLASS ACTION COMPLAINT

Plaintiff Davis Rodden ("Plaintiff"), on behalf of himself and all other similarly situated public stockholders of Maxwell Technologies, Inc. ("Maxwell or the "Company"), brings the following Verified Class Action Complaint (the "Complaint") against the members of the board of directors of Maxwell (the "Maxwell Board") for breaching their fiduciary duties. The allegations of the Complaint are based on the knowledge of Plaintiff as to himself, and on information and belief, including the investigation of counsel and review of publicly available information, as to all other matters.

INTRODUCTION

1. This action arises from breaches of fiduciary duty by the Maxwell Board in connection with the filing of a Solicitation/Recommendation Statement (the "Solicitation/Recommendation Statement") on Schedule 14D-9 with the U.S. Securities and Exchange Commission ("SEC") on February 20, 2019.

2. The Solicitation/Recommendation Statement relates to an exchange offer by Cambria Acquisition Corp. (the "Offeror"), a wholly-owned subsidiary of Tesla, Inc. (collectively referred to herein with the Offeror as "Tesla"), as disclosed in a Tender Offer Statement on Schedule TO filed by Tesla with the SEC on February 20, 2019, pursuant to which Tesla is offering to acquire all of the issued and outstanding shares of Maxwell common stock (the "Offer").

3. Each Maxwell stockholder who participates in the Offer will receive, for each share of Maxwell common stock validly tendered and not withdrawn:

> shares of Tesla Common Stock, $0.001 par value per share ("Tesla Common Stock"), equal to the quotient obtained by dividing $4.75 by the volume weighted average of the daily volume weighted average of the trading price of one (1) share of Tesla common stock as reported on the Nasdaq Global Select Market for the five (5) consecutive trading days ending on and including the second trading day immediately preceding the expiration of the Offer (the "Tesla Trading Price"), subject to the minimum, together with cash in lieu of any fractional shares of Tesla Common Stock (the "Offer Consideration"), without interest and less any applicable withholding taxes. In the event that the Tesla Trading Price is equal to or less than $245.90, the minimum will apply and each share of Maxwell Common Stock validly tendered and not validly withdrawn will be exchanged for 0.0193 of a share of Tesla Common Stock.

4. The Offer is being made pursuant to an Agreement and Plan of Merger (the "Merger Agreement") dated February 3, 2019 between Maxwell and Tesla. According to the Solicitation/Recommendation Statement, Tesla commenced the Offer on February 20, 2019, and the Offer will expire on March 19, 2019 (subject to extension in certain circumstances).

5. Further according to the Solicitation/Recommendation Statement, following the completion of the Offer the Offeror will be merged with and into Maxwell, with Maxwell surviving as a wholly-owned subsidiary of Tesla through a merger (the "Merger") effected pursuant to Section 251(h) of the Delaware General Corporation Law. In the Merger, each then-outstanding share of Maxwell common stock (other than shares of Maxwell common stock held in treasury, by Tesla or Maxwell or their respective subsidiaries) will be cancelled and converted into the right to receive the Offer Consideration.[1]

6. The Solicitation/Recommendation Statement fails to disclose patently material information to Maxwell stockholders about Barclays Capital Inc. ("Barclays"), the sole financial advisor engaged by Maxwell in connection with the Proposed Transaction. Specifically, the Solicitation/Recommendation Statement fails to disclose to Maxwell stockholders the financial compensation that Barclays has received ***from each of Maxwell and Tesla*** through recent financial advisory engagements outside of the Proposed Transaction.

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1 The Offer and Merger are collectively referred to herein as the "Proposed Transaction."

7. This omitted information is patently material because it is imperative for Maxwell stockholders to be able to understand what factors might have influenced Barclays' analytical efforts in providing a fairness opinion concerning the Proposed Transaction and the Offer Consideration. In order to fairly assess the Proposed Transaction and determine how to respond to the Offer, and to assess whether to rely on Barclays' fairness opinion in making those decisions, Maxwell stockholders, such as Plaintiff, are entitled to know all material information concerning Barclays' conflicts of interest with respect to the Proposed Transaction. Maxwell stockholders would find the information concerning Barclays' conflicts of interest material in determining how to respond to the Offer.

THE PARTIES

8. Plaintiff is a stockholder of Maxwell and has owned Maxwell common stock at all material times alleged in this Complaint.

9. Relevant non-party Maxwell develops, manufactures and markets energy storage and power delivery products for transportation, grid energy storage, industrial and other applications. Maxwell is incorporated in Delaware and maintains its principal executive offices at 3888 Calle Fortunada, San Diego, California 92123. The Company's common stock is publicly traded on the NASDAQ Global Market under the ticker symbol "MXWL."

10. Defendant Steven Bilodeau has served as a member of the Maxwell Board since May 2016, and as Chairman of the Board since 2017.

11. Defendant Richard Bergman has served as a member of the Maxwell Board since May 2015.

12. Defendant Jörg Buchheim has served as a member of the Maxwell Board since July 2016.

13. Defendant Franz J. Fink ("Dr. Fink") is Maxwell's President and Chief Executive Officer ("CEO"), and has served as a member of the Maxwell Board since May 2014.

14. Defendant Burkhard Goeschel has served as a member of the Maxwell Board since February 2007.

15. Defendant Ilya Golubovich has served as a member of the Maxwell Board since May 2017.

16. Defendant John Mutch has served as a member of the Maxwell Board since April 2017.

17. The defendants listed in paragraphs 10 through 16 above are collectively referred to herein as the "Maxwell Board" or the "Individual Defendants."

SUBSTANTIVE ALLEGATIONS

Maxwell Negotiates the Proposed Transaction with Tesla

18. According to the Solicitation/Recommendation Statement, "[i]n mid-2018, Tesla and Maxwell began a series of discussions in connection with a potential strategic commercial relationship."

19. The Solicitation/Recommendation Statement reports that, on December 12, 2018, "Brian Scelfo of Tesla contacted Dr. Fink to convey Tesla's interest in a potential acquisition of Maxwell rather than pursuing a strategic commercial relationship."

20. The Solicitation/Recommendation Statement details how, on December 13, 2018, the Maxwell Board held a meeting to discuss, among other things, "various considerations in determining whether to engage in discussions regarding a potential sale of Maxwell and in particular with entering into negotiations with Tesla, including whether and how to respond to any proposal that may be received from Tesla . . . ." During the meeting, representatives from Barclays "previewed certain financial information and metrics, based on publicly available information and information provided to Barclays by Maxwell management regarding the various alternatives available to Maxwell, including moving forward as a standalone company or a potential sale of the company."

21. Over the following weeks, the Solicitation/Recommendation Statement details how the Maxwell Board rejected several offers from Tesla to acquire the Company, including an offer from Tesla to acquire 100% of the outstanding shares of Maxwell common stock at a per share purchase price of $4.35.

22. On December 28, 2018, according to the Solicitation/Recommendation Statement, the Maxwell Board approved the formation of a Strategic Transaction Committee of the Maxwell Board (the "Strategic Transaction Committee").

23. The Solicitation/Recommendation Statement reports that, on January 8, 2019, "Barclays provided the Maxwell Board a document that disclosed its relationships with two potential parties that were identified as potential acquirers of Maxwell, including Tesla."

24. Further according to the Solicitation/Recommendation Statement, on January 16, 2019, "based on a number of factors discussed and reviewed by the Maxwell Board, representatives of Barclays and members of management, Maxwell provided a written response to Tesla proposing a counteroffer of $4.75 per share . . . ."

25. On January 18, 2019, according to the Solicitation/Recommendation Statement, "Mr. Scelfo, on behalf of Tesla, delivered a revised non-binding letter of intent to Dr. Fink. The offer continued to be an acquisition of 100% of the outstanding shares of capital stock of Maxwell. In the non-binding letter of intent, Tesla indicated a new per share purchase price of $4.75."

26. The Solicitation/Recommendation Statement reports that, on January 19, 2019, the Strategic Transaction Committee held a meeting attended by Maxwell management, Barclays, and the Company's legal representatives. During that meeting "[r]epresentatives from Barclays previewed certain information and metrics relating to a fixed value construct and price collars that would fix the per share value at $4.75 and determine the number of Tesla shares to be issued at closing rather than at signing."

27. According to the Solicitation/Recommendation Statement, on January 23, 2019, "Maxwell and Tesla entered into the non-binding letter of intent and an exclusivity and non-solicitation agreement with Tesla providing for exclusive negotiations through February 21, 2019."

28. On February 2, 2019, the Strategic Transaction Committee held a special meeting. According to the Solicitation/Recommendation Statement, during the meeting Barclays, among other things, "reviewed certain financial metrics and provided an overview of its preliminary financial analyses with respect to the proposed transaction."

29. Further according to the Solicitation/Recommendation Statement, on February 3, 2019, the Strategic Transaction Committee held another special meeting. During that meeting "[r]epresentatives of Barclays presented its financial analyses, based on publicly available information and information provided to Barclays by Maxwell management, of the consideration to be received by Maxwell's stockholders . . . ." Subsequently, the Strategic Transaction Committee made certain recommendations to the Maxwell Board in favor of the Proposed Transaction.

30. Immediately following the meeting of the Strategic Transaction Committee, the full Maxwell Board held a special meeting. According to the Solicitation/Recommendation Statement, during that meeting:

> Representatives of Barclays presented its financial analyses, based on publicly available information and information provided to Barclays by Maxwell management, regarding the consideration to be received by Maxwell's stockholders pursuant to the final form of the definitive merger agreement, and the final financial terms of Tesla's offer, including the Offer Consideration. . . . Representatives of Barclays then rendered Barclays' oral fairness opinion to the Maxwell Board, subsequently confirmed by delivery of a written opinion dated February 3, 2019, to the effect that, as of the date of such opinion and based upon and subject to the various qualifications, factors, limitations and other matters set forth therein, from a financial point of view, the Offer Consideration per share of Maxwell common stock (the "Offer Consideration per share") to be offered to the holders (other than Tesla and its affiliates) of Maxwell common stock pursuant to the merger agreement was fair to such holders.

Following discussion, the Maxwell Board: (i) "determined that the terms of the transactions contemplated by the merger agreement, including the offer and the merger, are fair to and in the best interests of Maxwell and its stockholders"; (ii) "determined that it is in the best interests of Maxwell and its stockholders, and declared it advisable, to enter into the merger agreement"; and (iii) approved the execution and delivery by Maxwell of the merger agreement."

31. Finally, according to the Solicitation/Recommendation Statement, on February 3, 2019, "Maxwell and Tesla signed the definitive merger agreement and, before the open of markets on February 4, 2019, Maxwell issued a press release announcing the transaction." According to the press release, Barclays purportedly "served as independent advisor to Maxwell in connection with the transaction."

Barclays Served as Maxwell's Sole Financial Advisor in Connection with the Proposed Transaction

32. As detailed above, Barclays served as Maxwell's sole financial advisor in connection with the Proposed Transaction.

33. Also as detailed above, and with respect to the Proposed Transaction, on February 3, 2019, Barclays' provided a fairness opinion to the Maxwell Board stating, among other things, that "the Offer Consideration per share of Maxwell common stock . . . to be offered to the holders (other than Tesla and its affiliates) of Maxwell common stock pursuant to the merger agreement was fair to such holders."
¶ 3

34. In connection with the Proposed Transaction, Maxwell agreed to pay Barclays for its advisory services an aggregate fee "currently estimated" at approximately $4.87 million, of which $4.37 million – or ***89.7%*** – is contingent upon the consummation of the Proposed Transaction.

35. Barclays' incentive to see the Proposed Transaction consummated frames its credibility as an adviser to the Maxwell Board on the Proposed Transaction.

Maxwell Issues the Materially Deficient Solicitation/Recommendation Statement Which Omits Plainly Material Information

36. In connection with the Proposed Transaction, on February 20, 2019, Maxwell filed a Solicitation/Recommendation Statement with the SEC on Schedule 14D-9.

37. The Solicitation/Recommendation Statement fails to disclose plainly material information necessary to permit Maxwell stockholders to make an informed decision about the Proposed Transaction and determine how to respond to the Offer.

38. Specifically, the Solicitation/Recommendation Statement fails to disclose the amount of financial compensation that Barclays has received ***from each of Maxwell and Tesla*** in connection with recent ***prior*** financial engagements outside of the Proposed Transaction. In relevant part, the Solicitation/Recommendation Statement discusses Barclays' prior financial engagements as follows:

> Barclays has performed various investment banking and financial services for Maxwell, Tesla and their affiliates in the past, and expect to perform such services in the future, and have received, and expect to receive, ***customary fees for such services***. Specifically, in the past two years, Barclays has performed the following investment banking and financial services: (i) acted as bookrunner in connection with ***Tesla's*** offering of $1.0 billion convertible notes in March 2017; (ii) acted as an underwriter in connection with ***Tesla's*** $402.5 million follow-on offering in March 2017; (iii) acted as financial advisor in connection with [] ***Maxwell's*** Defense Advisory Settlement entered into in April 2017; (iv) acted as joint bookrunner in connection with ***Tesla's*** inaugural high yield offering of $1.80 billion senior notes due 2025 in August 2017; (v) acted as an underwriter in connection with [] ***Maxwell's*** $46.0 million senior unsecured convertible notes offering in October 2017; (vi) acted as an underwriter in connection with [] ***Maxwell's*** $23.0 million follow-on offering in August 2018; and (vii) acted as financial advisor in connection with [] ***Maxwell's*** divestiture of its high voltage capacitors business in December 2018. (Emphasis added)

39. The Solicitation/Recommendation Statement also fails to disclose the amount of financial compensation that Barclays has received (or expects to receive) ***from each of Maxwell and Tesla*** in connection with ***current*** financial engagements outside of the Proposed Transaction. Instead, the Solicitation/Recommendation Statement states:

> In addition, (i) Barclays is currently engaged by [] ***Maxwell*** to advise on certain corporate defensive advisory matters should they arise and we would receive customary fees in connection therewith; (ii) an affiliate of Barclays acts as a lender under ***Tesla's*** $1.2 billion revolving credit facility which expires in June 2020; (iii) in addition to the lending relationship with Tesla specified in the preceding clause, an affiliate of Barclays also acts as a lender in connection with two other facilities with different entities affiliated with ***Tesla***, both of which expire in August 2019; and (iv) ***Barclays remains in contact with Tesla*** concerning the possible future provision of investment banking and financial services. (Emphasis added)

40. Because the Solicitation/Recommendation Statement fails to disclose to Maxwell stockholders the amounts of financial compensation that Barclays has received (or expects to receive) from each of Maxwell and Tesla outside of the Proposed Transaction, the Solicitation/Recommendation Statement also necessarily fails to properly disclose Barclays' conflicts of interest with respect to the Proposed Transaction and the parties to the Proposed Transaction.[2]

41. The information omitted from the Solicitation/Recommendation Statement concerning Barclays' financial compensation received from each of Maxwell and Tesla is patently material to Maxwell stockholders in evaluating the Proposed Transaction and determining how to respond to the Offer because it directly impacts the motivations of Barclays in its role as Maxwell's sole financial advisor in connection with the Proposed Transaction. In order to fairly assess the

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2 Delaware courts have repeatedly found that the failure to disclose this type of information gives rise to colorable disclosure claims. *See, e.g, In re Ness Techs*, 2011 Del. Ch. LEXIS 107, at **10-11 (noting that "[i]f the amount of business that one of the financial advisors has done with CVCI or its affiliates is material, then the failure to disclose fully the extent of that business could violate the duty of disclosure."); *Ortsman v. Green*, 2007 Del. Ch. LEXIS 29 (Del. Ch. Feb. 28, 2007) (finding "colorable disclosure claims" where the company's directors allegedly failed to disclose the amount of fees paid to the company's financial advisor, whether the fees were conditioned on rendering a fairness opinion, and the amount of fees earned by the company's financial advisor in past transactions). Proposed Transaction and determine how to respond to the Offer, and to assess whether to rely on Barclays' fairness opinion in making that determination, Maxwell stockholders, such as Plaintiff, are entitled to know all material information concerning Barclays' conflicts of interest.[3]

Proposed Transaction and determine how to respond to the Offer, and to assess whether to rely on Barclays' fairness opinion in making that determination, Maxwell stockholders, such as Plaintiff, are entitled to know all material information concerning Barclays' conflicts of interest.[3]

42. Without disclosure of this information, Maxwell stockholders are left guessing as to whether Barclays' conflicts of interest tainted the process, and will be unable to make an informed decision as to the Proposed Transaction and determine how to respond to the Offer.[4]

CLASS ACTION ALLEGATIONS

43. Plaintiff brings this action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all other holders of Maxwell common stock (except Defendants herein and any persons, firm, trust, corporation or other entity related to or affiliated with them and their successors in interest) who are or will be threatened with injury arising from Defendants' wrongful actions, as more fully described herein (the "Class").

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3 *See e.g., In re John Q. Hammons Hotels Inc. S'holder Litig.*, 2009 Del Ch. LEXIS 174 at *55 (Del. Ch. Oct. 2, 2009) ("This Court . . . has stressed the importance of disclosure of potential conflicts of interest of financial advisors."); *Vento v. Curry*, 2017 Del. Ch. LEXIS 45, at *6 (Del. Ch. Mar. 22, 2017) ("It is well established under Delaware law that '[b]ecause of the central role played by investment banks in the evaluation, exploration, selection, and implementation of strategic alternatives, this Court has required full disclosure of investment banker compensation and potential conflicts.'") (internal citation omitted).

4 *See, e.g., David P. Simonetti Rollover IRA v. Margolis*, 2008 Del. Ch. LEXIS 78 at *24 (Del. Ch. June 27, 2008) ("The financial advisor's opinion of financial fairness for a proposed transaction is one of the most important process-based underpinnings of a board's recommendation of a transaction to its stockholders and, in turn, for the stockholders' decisions on the appropriateness of the transaction. Thus, it is imperative for the stockholders to be able to understand what factors might influence the financial advisor's analytical efforts.").

44. This action is properly maintainable as a class action.

45. The Class is so numerous that joinder of all members is impracticable.

46. There are hundreds of Maxwell stockholders who are scattered throughout the United States. As of February 11, 2019, over 46 million shares of Maxwell common stock were issued and outstanding.

47. There are questions of law and fact common to the Class, including, *inter alia*, whether:

a. The Individual Defendants breached their fiduciary duties by failing to disclose all material information necessary to allow Maxwell stockholders to make a fully informed decision as to the Proposed Transaction and Offer;

b. Plaintiff and the other members of the Class are being and will continue to be injured by the wrongful conduct alleged herein and, if so, what is the proper remedy and/or measure of damages; and

c. Plaintiff and the other members of the Class will be damaged irreparably by the Individual Defendants' conduct.

48. Plaintiff is committed to prosecuting the action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class, and Plaintiff has the same interests as the other members of the Class. Plaintiff is an adequate representative of the Class.

49. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants or adjudications with respect to individual members of the Class that would as a practical matter be disjunctive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

50. Plaintiff and the Class have no adequate remedy at law.

COUNT I

DIRECT CLAIM FOR BREACH OF FIDUCIARY DUTY
AGAINST THE INDIVIDUAL DEFENDANTS

51. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

52. The Individual Defendants, as Maxwell directors, owe the Class the utmost fiduciary duties of due care, good faith, candor and loyalty.

53. The Individual Defendants failed to fulfill their fiduciary duties in connection with the Proposed Transaction by failing to disclose all material information necessary to allow Maxwell stockholders to make an informed decision concerning the Proposed Transaction and how to respond to the Offer.

54. As a result of the Individual Defendants' breaches of fiduciary duty, the Class will be harmed by virtue of being deprived of their right to make a fully informed decision concerning the Proposed Transaction and determining how to respond to the Offer.

55. Plaintiff and the Class have no adequate remedy at law.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands judgment as follows:

a. Finding the Individual Defendants liable for breaching their fiduciary duties owed to the Class;

b. Certifying the proposed Class;

c. Awarding Plaintiff the costs and disbursements of this action, including attorneys', accountants', and experts' fees; and

d. Awarding such other and further relief as is just and equitable.

Dated: March 4, 2019

Respectfully submitted,

COOCH AND TAYLOR, P.A.

/s/ Blake A. Bennett
Blake A. Bennett (#5133)
The Brandywine Building
1000 West Street, 10th Floor
Wilmington, DE 19801
(302) 984-3800

Counsel for Plaintiff

Of Counsel:

D. Seamus Kaskela
KASKELA LAW LLC
18 Campus Boulevard, Suite 100
Newtown Square, PA 19073
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Exhibit (a)(5)(K)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JACK PHILLIPPS, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

v.

MAXWELL TECHNOLOGIES, INC., STEVE BILODEAU, RICHARD BERGMAN, JORG BUCHHEIM, FRANZ J. FINK, BURKHARD GOESCHEL, ILYA GOLUBOVICH, and JOHN MUTCH,

Defendants.

Civil Action No.

CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

JURY TRIAL DEMANDED

Plaintiff Jack Phillipps ("Plaintiff") by and through his undersigned attorneys, brings this class action on behalf of himself and all others similarly situated, and alleges the following based upon personal knowledge as to those allegations concerning Plaintiff and, as to all other matters, upon the investigation of counsel, which includes, without limitation: (a) review and analysis of public filings made by Maxwell Technologies, Inc., ("Maxwell" or the "Company") and other related parties and non-parties with the United States Securities and Exchange Commission ("SEC"); (b) review and analysis of press releases and other publications disseminated by certain of the Defendants (defined below) and other related non-parties; (c) review of news articles, shareholder communications, and postings on Maxwell's website concerning the Company's public statements; and (d) review of other publicly available information concerning Maxwell and the Defendants.

NATURE OF THE ACTION

1. Plaintiff brings this class action on behalf of the public shareholders of Maxwell against the Company and members of the Company's Board of Directors (the "Board" or the "Individual Defendants") for violations of Sections 14(d)(4), 14(e) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78n(d)(4), 78n(e), 78t(a), and SEC Rule 14d-9, 17 C.F.R. §240.14d-9(d) ("Rule 14d-9"), in connection with the proposed acquisition of the Company by Tesla, Inc. ("Tesla") (the "Proposed Transaction").

2. On February 4, 2019, Maxwell announced that the Company had entered into a definitive agreement and plan of merger with Tesla (the "Merger Agreement"), pursuant to which Tesla will commence an all stock exchange offer for all of the issued and outstanding shares of Maxwell (the "Offer"). Participants will receive shares of Tesla Common Stock, $0.001 par value per share ("Tesla Common Stock"), equal to the quotient obtained by dividing $4.75 by the volume weighted average of the daily volume weighted average of the trading price of one (1) share of Tesla common stock as reported on the Nasdaq Global Select Market for the five (5) consecutive trading days ending on and including the second trading day immediately preceding the expiration of the Offer (the "Tesla Trading Price"), subject to the minimum, together with cash in lieu of any fractional shares of Tesla Common Stock (the "Offer Consideration"), without interest and less any applicable withholding taxes. In the event that the Tesla Trading Price is equal to or less than $245.90, the minimum will apply and each share of Maxwell Common Stock validly tendered and not validly withdrawn will be exchanged for 0.0193 of a share of Tesla Common Stock.

3. On February 20, 2019, the Company filed an incomplete and materially misleading Solicitation Statement with the SEC (the "Solicitation Statement") on Form 14D9 in connection with the Proposed Transaction.

4. Also on February 20, 2019, the Company authorized the filing of a Registration Statement on Form S-4 (the "Registration Statement," and together with the Solicitation Statement the "Tender Materials") with the SEC in support of the Proposed Transaction. The Tender Materials omit material information regarding the Proposed Transaction.

5. Accordingly, the failure to adequately disclose such material information constitutes a violation of Sections 14(d), 14(e) and 20(a) of the Exchange Act as Maxwell stockholders need such information in order to make a fully informed decision whether to tender their shares in support of the Proposed Transaction or seek appraisal.

6. As set forth more fully herein, Plaintiff seeks to enjoin Defendants from proceeding with the Proposed Transaction.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 as Plaintiff alleges violations of Sections 14(d)(4), 14(e) and 20(a) of the Exchange Act

8. This Court has personal jurisdiction over all of the Defendants because each is either a corporation that conducts business in, solicits shareholders in, and/or maintains operations within, this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

9. Venue is proper under 28 U.S.C. § 1391 because a substantial portion of the transactions and wrongs complained of herein occurred in this District. In addition, the Company's common stock trades on the NASDAQ, which is headquartered in this District.

THE PARTIES

10. Plaintiff has been the owner of the common stock of Maxwell since prior to the transaction herein complained of and continuously to date.

11. Defendant Maxwell is a Delaware corporation with its principal executive offices located at 3888 Calle Fortunada, San Diego, California 92123. The Company's stock trades on the NASDAQ under the ticker "MXWL."

12. Defendant Steve Bilodeau ("Bilodeau") is and has been the Chairman of the Board and a director of the Company at all times during the relevant time period.

13. Defendant Richard Bergman ("Bergman") is and has been a director of the Company at all times during the relevant time period.

14. Defendant Jorg Buchheim ("Buchheim") is and has been a director of the Company at all times during the relevant time period.

15. Defendant Franz J. Fink ("Fink") is and has been a director of the Company at all times during the relevant time period.

16. Defendant Burkhard Goeschel ("Goeschel") is and has been a director of the Company at all times during the relevant time period.

17. Defendant Ilya Golubovich ("Golubovich") is and has been a director of the Company at all times during the relevant time period.

18. Defendant John Mutch ("Mutch") is and has been a director of the Company at all times during the relevant time period.

19. Defendants Bilodeau, Bergman, Buchheim, Fink, Goeschel, Golubovich, and Mutch are collectively referred to herein as the "Individual Defendants."

20. Defendant Maxwell, along with the Individual Defendants, are collectively referred to herein as "Defendants."

CLASS ACTION ALLEGATIONS

21. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and the other public stockholders of Maxwell (the "Class"). Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any Defendant.

22. This action is properly maintainable as a class action because.

a. The Class is so numerous that joinder of all members is impracticable. As of February 11, 2019, there were over 46 million shares of Maxwell common stock outstanding, held by hundreds to thousands of individuals and entities scattered throughout the country. The actual number of public stockholders of Maxwell will be ascertained through discovery;

b. There are questions of law and fact that are common to the Class that predominate over any questions affecting only individual members, including, among others: Questions of law and fact are common to the Class, including, among others: (i) whether Defendants have violated Sections 14(d)(4) of the Exchange Act and Rule 14d-9 promulgated thereunder in connection with the Proposed Transaction; (ii) whether Defendants have violated Section 14(e) and 20(a) of the Exchange Act; and (iii) whether Plaintiff and the Class would be irreparably harmed if the Proposed Transaction is consummated as currently contemplated and pursuant to the Tender Materials as currently composed.

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

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

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

f. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole; and

g. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

SUBSTANTIVE ALLEGATIONS

Background of the Company

23. Maxwell is a leader in developing, manufacturing and marketing energy storage and power delivery solutions for automotive, heavy transportation, renewable energy, backup power, wireless communications and industrial and consumer electronics applications.

The Company Announces the Proposed Transaction

24. On February 4, 2019, Maxwell issued a press release announcing that the Company had entered an agreement in connection with the Proposed Transaction. The Company received financial opinions from Barclays Capital Inc ("Barclays") in connection with the Proposed Transaction.

25. The February 4, 2019 press release stated, in pertinent part:

> SAN DIEGO, Feb. 4, 2019 /PRNewswire/ — Maxwell Technologies, Inc. (Nasdaq: MXWL or the "Company" or "Maxwell"), a leading developer and manufacturer of energy solutions, today announced it has entered into a definitive agreement (the "Merger Agreement") to be acquired by Tesla, Inc. (Nasdaq: TSLA or "Tesla"). Tesla will commence an all stock exchange offer for all the issued and outstanding shares of the Company (the "Offer"), after which the Company will be merged with a Tesla subsidiary and become a wholly owned subsidiary of Tesla.
>
> 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 common stock as reported on the NASDAQ Global Select Market for the five consecutive trading days preceding the expiration of the Offer, and which is subject to a floor that has been set at 80% of a volume weighted average price of Tesla common stock calculated prior to signing.

The closing of the transaction is subject to the successful tender and exchange of shares, certain regulatory approvals and customary closing conditions. These terms, along with additional terms and conditions of the transaction, can be found 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.

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

The Merger Agreement and the consummation of the Offer, merger and other transactions contemplated in the Merger Agreement have been unanimously approved by Maxwell's board of directors, all of whom recommend to the Company's stockholders that they accept the Offer and tender their Maxwell 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.

"We are very excited with today's announcement that Tesla has agreed to acquire Maxwell. Tesla is a well-respected and world-class innovator that shares a common goal of building a more sustainable future," said Dr. Franz Fink, President and Chief Executive Officer of Maxwell. "We believe this transaction 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."

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

The Proposed Transaction is Unfair to Shareholders

26. The Proposed Transaction, as currently contemplated, is unfair to the Company's shareholders.

27. For instance, in connection with the Proposed Transaction, the Company agreed to preclusive deal protection devices that ensure that no competing offer for the Company would be forthcoming.

28. Specifically, pursuant to the agreement between the companies, Defendants agreed to: (i) a strict no-solicitation provision that prevents the Company from soliciting other potential acquirers; (ii) an information rights provision that requires the Company to keep Tesla informed of the status and material terms of any proposals or offers received concerning a *bona fide* acquisition proposal, giving Tesla the ability to top any superior offer for the Company; and (iii) a provision that requires the Company to pay Tesla a termination fee of $8,295,000 if the Company terminates the Proposed Transaction under specified circumstances.

29. These deal protection provisions, particularly when considered collectively, substantially and improperly limited the Board's ability to act with respect to investigating and pursuing superior proposals and alternatives. Given that the preclusive deal protection provisions in the agreement between the companies impede a superior suitor from emerging, it is imperative that the Company's shareholders receive all material information necessary for them to make an informed decision as to whether to tender their shares in favor of the Proposed Transaction.

Compensation to Certain of the Company's
Insiders Resulting From the Proposed Transaction

30. Certain of the officers and/or directors of the Company have significant financial interests in completing the Proposed Transaction.

31. The following charts, taken from the Tender Materials, shows the payouts to the Company's officers and directors as a result of the Proposed Transaction:

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

Name	Vested Maxwell Options (#)(1)	Invested 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 ($)(7)	Total ($)
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

32. In addition, certain employment agreements with certain Maxwell executives, entitle such executives to severance packages should their employment be terminated under certain circumstances. 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

FALSE AND MISLEADING STATEMENTS AND/OR MATERIAL OMISSIONS IN THE TENDER MATERIALS

33. On February 20, 2018, the Company authorized the filing of the Tender Materials with the SEC. The Tender Materials recommend that the Company's stockholders tender their shares in favor of the Proposed Transaction.

34. Defendants were obligated to carefully review the Tender Materials prior to its filing with the SEC and dissemination to the Company's unitholders to ensure that it did not contain any material misrepresentations or omissions. However, the Tender Materials misrepresent and/or omit material information that is necessary for the Company's shareholders to make informed decisions concerning whether to tender their shares in favor of the Proposed Transaction.

Material False and Misleading Statements or Material
Misrepresentations or Omissions Regarding Managements Projections

35. The Solicitation Statement contains financial projections prepared by senior members of Maxwell's management in connection with the Proposed Transaction, but fails to provide material information concerning such.

36. The SEC has repeatedly emphasized that disclosure of non-GAAP projections can be inherently misleading, and has therefore heightened its scrutiny of the use of such projections.[1] Indeed, on May 17, 2016, the SEC's Division of Corporation Finance released new and updated Compliance and Disclosure Interpretations ("C&DIs") on the use of non-GAAP financial measures that demonstrate the SEC's tightening policy.[2] One of the new C&DIs regarding forward-looking information, such as financial projections, explicitly requires companies to provide any reconciling metrics that are available without unreasonable efforts.

37. In order to make management's financial projections included in the Solicitation Statement materially complete and not misleading, Defendants must provide a reconciliation table of the non-GAAP measures to the most comparable GAAP measures.

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1 *See, e.g.*, Nicolas Grabar and Sandra Flow, Non-GAAP Financial Measures: The SEC's Evolving Views, Harvard Law School Forum on Corporate Governance and Financial Regulation (June 24, 2016), *available at* https://corpgov.law.harvard.edu/2016/06/24/non-gaap-financial-measuresthesecs evolving-views/; Gretchen Morgenson, Fantasy Math Is Helping Companies Spin Losses Into Profits, N.Y. Times, Apr. 22, 2016, available at http://www.nytimes.com/2016/04/24/business/fantasy-mathis-helping-companies-spin-ossesinto- profits.html?_r=0.

2 Non-GAAP Financial Measures, Compliance & Disclosure Interpretations, U.S. SECURITIES AND EXCHANGE COMMISSION (May 17, 2017), *available at* https://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm.

38. With respect to Maxwell's Financial Projections, at the very least, the Company must disclose the line item projections for the financial metrics that were used to calculate the non-GAAP measures on page 32 of the Solicitation Statement, including, but not limited to: (i) EBIT; (ii) Adjusted EBITDA; and (iii) Unlevered Free Cash Flows.

39. Disclosure of the above line item projections is vital to provide investors with the complete mix of information necessary to make an informed decision when voting on the Proposed Transaction.

Material False and Misleading Statements or Material
Misrepresentations or Omissions Regarding Barclays' Opinion Statement

40. The Solicitation Statement contains the financial analyses and opinion of Barclays concerning the Proposed Transaction but fails to provide material information concerning information relied on by Barclays in rendering its opinion.

41. With respect to Barclays' *Selected Comparable Company Analysis*, the Solicitation Statement fails to disclose: (i) EV / Revenue for each of the companies selected; and (ii) the basis for selecting 0.25x to 1.75x to 2018 estimated EV / Revenue, 1.00x to 1.50x to 2019 estimated EV / Revenue, 1.00x to 1.50x to 2020 estimated EV / Revenue.

42. With respect to Barclays' *Selected Precedent Transaction Analysis*, the Solicitation Statement fails to disclose: (i) EV / LTM for each of the selected transactions; and (ii) the value of each selected transaction; and (iii) the date on which each transaction closed.

43. With respect to Barclays' *Discounted Cash Flow Analysis*, the Solicitation Statement fails to disclose: (i) the basis for selecting a range of perpetuity growth rates of 3% to 5%; and (ii) the basis for selecting a range of discount rates from 14.0% to 18.0%.

44. With respect to Barclays' *Transaction Premium Analysis*, the Solicitation Statement fails to disclose: (i) the criteria used in selecting the 280 companies reviewed by Barclays; and (ii) which companies were in fact selected for Barclays' analysis.

45. When a banker's endorsement of the fairness of a transaction is touted to shareholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed. Moreover, the disclosure of projected financial information is material because it provides stockholders with a basis to project the future financial performance of a company and allows stockholders to better understand the financial analyses performed by the company's financial advisor in support of its fairness opinion.

46. Without the above described information, the Company's shareholders are not fully informed with respect to the Proposed Transaction. Accordingly, in order to provide shareholders with a complete mix of information, the omitted information described above should be disclosed.

Material False and Misleading Statements or Material
Misrepresentations or Omissions Regarding the Background of the Proposed Transaction

47. Finally, the Solicitation Statement fails to disclose material information concerning the process leading up to the Proposed Transaction. An accurate and complete description of the process the Board used in entering into the Proposed Transaction is indeed material to the Company's shareholders, as it is vital information to determine whether or not to tender shares in favor of the Proposed Transaction.

48. First, the Solicitation Statement notes that "Dr. Franz Fink, the President and Chief Executive Officer, and other representatives of Maxwell, on the one hand, and representatives of Tesla, on the other hand, have had discussions from time to time to better understand each other's respective businesses, platforms and products, and to explore various ways in which they could collaborate in order to advance their shared business objectives." However, the Solicitation Statement does not disclose whether these discussions concerned a potential transaction between the companies, such as a buyout or merger.

49. Next, the Solicitation Statement notes that in October 2018, the Company "received a non-binding confirmatory offer from Renaissance Management SA ("Renaissance") to purchase 100% of the shares of Maxwell SA and its high voltage product line," but fails to disclose further details such as the potential value of the transaction.

50. The Solicitation Statement notes that throughout negotiations concerning the Proposed Transaction, the Board examined the return on investment for certain of Maxwell's "larger institutional investors." However, the Solicitation Statement fails to disclose whether the same consideration was given to the Company's smaller shareholders. Moreover, the Solicitation Statement fails to disclose which "larger institutional investors" were considered, their returns on investment based upon the various transaction price scenarios, nor those investors' percentage of holdings in the Company's stock.

51. The Solicitation Statement notes that the Company authorized Barclays to contact twelve (12) potential parties that may be interested in a potential acquisition of the Company. However, the Solicitation Statement fails to disclose whether any of those potential parties ultimately entered into any mutual non-disclosure agreements with the Company that may contain "don't ask, don't waive" ("DADW") provisions that would prevent the potential suitor from making a topping bid for the Company. This information is material to shareholders in deciding whether to tender their shares in favor of the Proposed Transaction, as it would show whether or not a superior offer for the Company was available.

COUNT I

(Against All Defendants for Violations of Section 14(d) of the Exchange Act and Rule 14d-9 Promulgated Thereunder)

52. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

53. Section 14(d)(4) of the Exchange Act and Rule 14d-9 promulgated thereunder makes it a requirement to make full and complete disclosure in connection with tender offers.

54. As discussed herein, the Tender Materials, while soliciting shareholder support for the Proposed Transaction, misrepresent and/or omit material facts concerning the Proposed Transaction.

55. Defendants prepared, reviewed, filed and disseminated the false and misleading Tender Materials to Maxwell shareholders. In doing so, Defendants knew or recklessly disregarded that the Tender Materials failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

56. The omissions and incomplete and misleading statements in the Tender Materials are material in that a reasonable shareholder would consider them important in deciding whether to tender their shares in favor of the Proposed Transaction. In addition, a reasonable investor would view such information as altering the "total mix" of information made available to shareholders.

57. By virtue of their positions within the Company and/or roles in the process and in the preparation of the Tender Materials, Defendants were undoubtedly aware of this information and had previously reviewed it, including participating in the Proposed Transaction negotiation and sales process and reviewing Maxwell's financial advisor's complete financial analyses purportedly summarized in the Tender Materials.

58. The Individual Defendants undoubtedly reviewed and relied upon the omitted information identified above in connection with their decision to approve and recommend the Proposed Transaction.

59. Maxwell is deemed negligent as a result of the Individual Defendants' negligence in preparing and reviewing the Tender Materials.

60. Defendants knew that Plaintiff and the other members of the Class would rely upon the Tender Materials in determining whether to tender their shares in favor of the Proposed Transaction.

61. As a direct and proximate result of Defendants' unlawful course of conduct in violation of Section 14(d)(4) of the Exchange Act and Rule 14d-9 promulgated thereunder, absent injunctive relief from the Court, Plaintiff and the other members of the Class will suffer irreparable injury by being denied the opportunity to make an informed decision as to whether to tender their shares in favor of the Proposed Transaction.

62. Plaintiff and the Class have no adequate remedy at law.

COUNT II

(Against All Defendants for Violation Of Section 14(e) of the Exchange Act)

63. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

64. Defendants violated Section 14(e) of the Exchange Act by issuing the Tender Materials in which they made false statements of material fact or failed to state all material facts that would be necessary to make the statements made, in light of the circumstances, not misleading, or engaged in deceptive or manipulative acts or practices, in connection with the Proposed Transaction.

65. Defendants knew that Plaintiff and the Company's shareholders would rely upon their statements made in the Tender Materials in determining whether to tender shares in favor of the Proposed Transaction.

66. As a direct and proximate result of Defendants' unlawful course of conduct in violation of Section 14(e) of the Exchange Act, absent injunctive relief from the Court, Plaintiff and the other members of the Class will suffer irreparable injury by being denied the opportunity to make an informed decision as to whether to tender their shares in favor of the Proposed Transaction.

COUNT III

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

67. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

68. The Individual Defendants acted as controlling persons of Maxwell within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or directors of Maxwell, and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the Tender Materials filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading.

69. Each of the Individual Defendants were provided with or had unlimited access to copies of the Tender Materials and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

70. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations alleged herein, and exercised the same. The Tender Materials contain the unanimous recommendation of each of the Individual Defendants to approve the Proposed Transaction. They were thus directly connected with and involved in the making of the Tender Materials.

71. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(e) of the Exchange Act, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons and the acts described herein, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act.

72. As a direct and proximate result of Individual Defendants' conduct, Plaintiff will be irreparably harmed.

73. Plaintiff and the Class have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

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

B. Preliminarily and permanently enjoining Defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;

C. Directing the Individual Defendants to disseminate an Amendment to the Tender Materials that does not contain any untrue statements of material fact and that states all material facts required in it or necessary to make the statements contained therein not misleading;

D. Directing Defendants to account to Plaintiff and the Class for their damages sustained because of the wrongs complained of herein;

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

F. Granting such other and further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury.

Dated: February 28, 2019

Respectfully submitted,

By: /s/ Joshua M. Lifshitz

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Attorneys for Plaintiff

CERTIFICATION PURSUANT TO FEDERAL SECURITIES LAWS

I, Jack L. Phillipps ("Plaintiff"), hereby certify that:

1. Plaintiff has reviewed the complaint and authorized the commencement of a lead plaintiff motion and/or filing of a complaint on plaintiff's behalf.
2. I 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 any private action arising under this title.
3. I am willing to serve as a representative party on behalf of a class and will testify at deposition and trial, if necessary.
4. My tansactions in MXWL securities that are the subject of this litigation during the Class Period are attached hereto as Exhibit A.
5. I have not served as or sought to serve as a representative party on behalf of a Class under this title during the last three years.
6. I will not accept any payment for serving as a representative party, except to receive my pro rata share of any recovery or as ordered or approved by the Court, including the award to a representative of reasonable costs and expenses (including lost wages) directly relating to the representation of the class.

I declare under penalty of perjury that the foregoing are true and correct statements.

Executed on Feb 28, 2019

/s/ Jack L. Phillipps
Signature

Exhibit A

My transactions in Maxwell Technologies, Inc. (MXWL) securities that are the subject of this litigation during the class period set forth in the complaint are as follows ("P" indicates a purchase, "S" indicates a sale):

Security	Date	Sale	Purchase	Number of Shares	Price per Share
MXWL	3/27/2002		P	50	$ 9.285
MXWL	4/30/2002		P	100	$ 9.450
MXWL	8/20/2003		P	500	$ 7.830
MXWL	12/18/2003		P	100	$ 7.380
MXWL	12/22/2003		P	100	$ 7.020
MXWL	2/6/2004		P	300	$ 9.360
MXWL	1/19/2005		P	400	$ 9.339
MXWL	10/18/2006		P	500	$ 5.080
MXWL	10/18/2006		P	500	$ 5.080
MXWL	11/7/2006		P	500	$ 4.600
MXWL	11/27/2007		P	605	$ 8.120
MXWL	5/1/2012		P	545	$ 9.670
MXWL	11/30/2015		P	200	$ 7.070
MXWL	12/30/2015		P	100	$ 7.394
MXWL	8/7/2018		P	1500	$ 3.660
MXWL	12/20/2018		P	1500	$ 1.920