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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

, Individually
and on Behalf of All Others Similarly
Situating,

Plaintiff,

vs.

MAXWELL TECHNOLOGIES, INC.,
DAVID J. SCHRAMM, KEVIN S.
ROYAL and VAN M. ANDREWS,

Defendants.

) Case No.

) CLASS ACTION

) COMPLAINT FOR VIOLATION OF
THE FEDERAL SECURITIES LAWS

) DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. This is a securities fraud class action on behalf of all persons who
3 purchased the common stock of Maxwell Technologies, Inc. (“Maxwell” or the
4 “Company”) between April 28, 2011 and March 7, 2013, inclusive (the “Class
5 Period”). This action is brought against Maxwell and certain of its officers and/or
6 directors for violations of the Securities Exchange Act of 1934 (the “1934 Act”).

7 2. Maxwell develops, manufactures and markets energy storage and power
8 delivery products for transportation, industrial, telecommunications and other
9 applications and microelectronic products for space and satellite applications.

10 **SUMMARY OF THE ACTION**

11 3. During the Class Period, defendants issued materially false and
12 misleading statements regarding Maxwell’s financial performance and business
13 prospects and overstated the Company’s reported revenue. As a result of defendants’
14 false and misleading statements, the Company’s stock traded at artificially inflated
15 prices during the Class Period, reaching a high of \$21.20 per share on November 4,
16 2011.

17 4. On March 7, 2013, after the market closed, Maxwell issued a press
18 release disclosing that the Company would be restating previously issued financial
19 statements for 2011 and most of 2012 due to errors related to the timing of recognition
20 of revenue from sales to certain distributors. The Company further disclosed that the
21 financial statements should no longer be relied upon. The release stated in part:

22 Maxwell Technologies, Inc. announced today that on March 1, 2013, the
23 audit committee of its board of directors concluded that the previously
24 issued financial statements contained in its annual report on Form 10-K
25 for the year ended December 31, 2011, and all unaudited quarterly
26 reports on Form 10-Q in 2011 and 2012 (collectively, the “Prior
Periods”), as well [sic] its selected financial data for the related periods,
should no longer be relied upon because of errors in those financial
statements. The errors relate to the timing of recognition of revenue
from sales to certain distributors.

27 In addition to the financial statements for the Prior Periods, related
28 press releases furnished on current reports on Form 8-K, reports and
stockholder communications describing its financial statements for the

1 Prior Periods and the report of its independent registered public
2 accounting firm, McGladrey LLP (formerly McGladrey & Pullen, LLP),
3 related to the year ended December 31, 2011, should no longer be relied
4 upon.

5 The conclusion that the financial statements for the Prior Periods
6 cannot be relied upon is the result of an investigation by Maxwell's audit
7 committee, with the assistance of independent outside counsel and
8 forensic accountants. The investigation commenced following receipt of
9 information concerning potential recognition of revenue prior to the
10 satisfaction of certain of the criteria required to be met to recognize
11 revenue.

12 The investigation discovered arrangements with certain
13 distributors regarding the payment terms for sales to such distributors
14 with respect to certain transactions. These arrangements had not been
15 communicated to Maxwell's finance and accounting department and,
16 therefore, had not been considered when recording revenue on shipments
17 to these distributors. Based on the terms of the agreements with these
18 distributors as they were known to the finance and accounting
19 department, it had been the policy to account for revenue related to
20 shipments to these distributors as title passed to the distributor at either
21 shipment from Maxwell's facilities or receipt at the distributor's facility,
22 assuming all other revenue recognition criteria had been achieved. As a
23 result of the arrangements discovered during the investigation, Maxwell
24 does not believe that a fixed or determinable sales price existed at the
25 time of shipment to these distributors, nor was collection reasonably
26 assured, at least with respect to certain transactions. Therefore, the
27 revenue from such sales should not have been recognized at the time of
28 shipment to these distributors.

Maxwell believes that the impact to the Prior Periods of correcting
the errors in revenue recognition related to sales transactions to these
distributors will be to decrease previously reported revenues and profits
for 2011 and the first three quarters of 2012, and to increase revenue and
profits by the same amounts in subsequent periods.

Maxwell believes that the restatement of revenue related to these
distributors will decrease previously reported revenues for fiscal year
2011 by approximately \$6.5 million and decrease revenues in the first
three quarters of 2012 by approximately \$5.5 million in the aggregate.

Maxwell also believes that the restatement of revenue related to
these distributors will result in shipments to these distributors for which
title has passed to the distributor, but for which the revenue recognition
criteria has not been fully achieved, of approximately \$12.0 million as of
September 30, 2012. Of the shipments to these distributors that had not
been collected as of September 30, 2012, and therefore not recognized as
revenue, Maxwell collected \$4.6 million in the fourth quarter of 2012
and \$3.0 million to date in the first quarter of 2013, leaving \$4.4 million
outstanding that will be recognized as revenue as Maxwell receives
payments in the future.

Maxwell is in the process of evaluating deficiencies in its internal
controls over financial reporting and have preliminarily concluded that it

1 has material weaknesses in its internal controls over financial reporting
2 related to the identification and evaluation of revenue transactions which
3 deviate from contractually established payment terms and therefore has
4 preliminarily concluded that its internal controls over financial reporting
and disclosure are not effective. Maxwell intends to design and
implement controls to remediate these deficiencies.

5 As a result of the investigation, certain employees were terminated
and Maxwell's Sr. Vice President of Sales and Marketing resigned.

6 The Company, including the audit committee, has discussed the
7 foregoing matters with Maxwell's independent registered public
8 accounting firm, McGladrey LLP. The audit committee has authorized
9 and directed the officers of the Company to take the appropriate and
necessary actions to restate its financial statements for the Prior Periods.
Maxwell intends to file restated financial statements for the Prior Periods
as soon as reasonable practicable.

10 5. On this news, the Company's stock price dropped \$1.01 per share on
11 March 8, 2013 to close at \$8.10 per share, a one-day decline of 11% on volume of 1.7
12 million shares.

13 6. The true facts, which were known by the defendants but concealed from
14 the investing public during the Class Period, included:

15 (a) Maxwell had overstated its revenues and earnings in 2011 and
16 2012 in violation of Generally Accepted Accounting Principles ("GAAP").

17 (b) Maxwell had reported revenues prior to the time the sales price
18 was fixed and/or collection was reasonably assured.

19 (c) Maxwell's internal accounting controls were deficient and
20 permitted the premature recognition of revenue, leading to materially misstated
21 financial results.

22 7. As a result of defendants' false and misleading statements, Maxwell
23 common stock traded at artificially inflated prices during the Class Period. However,
24 after the above-alleged revelations of the true but undisclosed facts seeped into the
25 market, the Company's common stock experienced exorbitant selling pressure sending
26 its price down nearly 62% from its Class Period high.

1 **JURISDICTION AND VENUE**

2 8. The claims asserted herein arise under §§10(b) and 20(a) of the 1934 Act
3 (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 (17 C.F.R. §240.10b-5) promulgated
4 thereunder by the Securities and Exchange Commission (“SEC”). Jurisdiction is
5 conferred by §27 of the 1934 Act (15 U.S.C. §78aa).

6 9. Venue is proper pursuant to §27 of the 1934 Act. Maxwell maintains its
7 principal executive offices at 5271 Viewridge Court, Suite 100, San Diego, California
8 92123. Certain of the acts and conduct complained of herein, including the
9 dissemination of materially false and misleading information to the investing public,
10 occurred in this district.

11 10. In connection with the acts and conduct alleged herein, defendants,
12 directly and indirectly, used the means and instrumentalities of interstate commerce,
13 including, but not limited to, the United States mails, interstate telephone
14 communications and the facilities of the national securities exchanges and markets.

15 **PARTIES**

16 11. Plaintiff purchased the common stock of Maxwell
17 during the Class Period as set forth in the certification attached hereto and was
18 damaged as a result of defendants’ wrongdoing as alleged in this complaint.

19 12. Defendant Maxwell develops, manufactures, and markets energy storage,
20 power delivery and microelectronic products worldwide.

21 13. Defendant David J. Schramm (“Schramm”) is, and at all relevant times
22 was, President and Chief Executive Officer (“CEO”) of Maxwell. Schramm signed
23 the Company’s SEC filings and participated in conference calls with analysts and
24 investors during the Class Period.

25 14. Defendant Kevin S. Royal (“Royal”) is, and at all relevant times was,
26 Chief Financial Officer (“CFO”) and Senior Vice President of Maxwell. Royal signed
27 the Company’s SEC filings and participated in conference calls with analysts and
28 investors during the Class Period.

1 15. Defendant Van M. Andrews (“Andrews”) was Senior Vice President,
2 Sales and Marketing of Maxwell until his resignation on March 1, 2013.

3 16. The defendants identified in ¶¶13-15 are referred to herein as the
4 “Individual Defendants.”

5 17. The Individual Defendants, because of their positions with the Company,
6 possessed the power and authority to control the contents of Maxwell’s quarterly
7 reports, press releases and presentations to securities analysts, money and portfolio
8 managers and institutional investors, *i.e.*, the market. They were provided with copies
9 of the Company’s reports and press releases alleged herein to be misleading prior to or
10 shortly after their issuance and had the ability and opportunity to prevent their
11 issuance or cause them to be corrected. Because of their positions with the Company,
12 and their access to material non-public information available to them but not to the
13 public, the Individual Defendants knew that the adverse facts specified herein had not
14 been disclosed to and were being concealed from the public and that the positive
15 representations being made were then materially false and misleading. The Individual
16 Defendants are liable for the false and misleading statements pleaded herein.

17 **FRAUDULENT SCHEME AND COURSE OF BUSINESS**

18 18. Defendants are liable for: (i) making false and/or misleading statements;
19 or (ii) failing to disclose adverse facts known to them about Maxwell. Defendants’
20 fraudulent scheme and course of business that operated as a fraud or deceit on
21 purchasers of Maxwell common stock was a success, as it: (i) deceived the investing
22 public regarding Maxwell’s prospects and business; (ii) artificially inflated the price
23 of Maxwell common stock; (iii) caused plaintiff and other members of the Class to
24 purchase Maxwell common stock at inflated prices.

25 **BACKGROUND**

26 19. Maxwell develops, manufactures, and markets energy storage, power
27 delivery and microelectronic products worldwide. The Company offers
28 ultracapacitors, which are energy storage devices that provide energy storage and

1 power delivery solutions for applications in the transportation, automotive,
2 information technology, renewable energy, and industrial electronics industries; and
3 CONDIS high-voltage capacitors comprising grading and coupling capacitors, and
4 capacitive voltage dividers used to ensure the safety and reliability of electric utility
5 infrastructure and other applications involving transport, distribution, and
6 measurement of high-voltage electrical energy. Maxwell also provides radiation-
7 hardened microelectronic products, including single-board computers and
8 components, such as high-density memory and power modules for satellites and
9 spacecraft applications. The Company markets and sells its products through direct
10 and indirect sales for integration by original equipment manufacturers into a range of
11 end products. Maxwell was founded in 1965 and is headquartered in San Diego,
12 California.

13 20. Maxwell's revenue was primarily derived from the sale of products. In
14 Maxwell's 2010 Form 10-K, the Company represented that its revenue recognition
15 policy for product sales was as follows:

16 *Assumptions and Approach Used.* Product revenue is recognized
17 when all of the following criteria are met: (1) persuasive evidence of an
18 arrangement exists (upon contract signing or receipt of an authorized
19 purchase order from a customer); (2) title passes to the customer at either
20 shipment from our facilities or receipt at the customer facility, depending
21 on shipping terms; (3) price is deemed fixed or determinable and free of
22 contingencies or significant uncertainties; and (4) collectability is
23 reasonably assured. Customer purchase orders and/or contracts are
24 generally used to determine the existence of an arrangement. Shipping
documents are used to verify product delivery. We assess whether a price
is fixed or determinable based upon the payment terms associated with
the transaction. If a volume discount is offered, revenue is recognized at
the lowest price offered to the customer. We assess the collectability of
accounts receivable based primarily upon creditworthiness of the
customer as determined by credit checks and analysis, as well as the
customer's payment history.

25 **DEFENDANTS' FALSE AND MISLEADING STATEMENTS**
26 **ISSUED DURING THE CLASS PERIOD**

27 21. On April 28, 2011, Maxwell issued a press release announcing its first
28 quarter 2011 financial results. The Company reported net income of \$196,000, or

1 \$0.01 diluted earnings per share (“EPS”), and revenue of \$35.3 million for the first
2 quarter ended March 31, 2011. The release stated in part:

3 “Energy storage solutions for wind turbine blade pitch systems
4 and hybrid and electric transit vehicle drive systems continued to be
5 primary drivers of ultracapacitor sales growth, along with increasing
6 contributions from automotive stop-start idle elimination systems and
7 various backup power applications,” said David Schramm, Maxwell’s
8 president and chief executive officer. “This strong top line growth and
9 ongoing cost reduction and efficiency improvements also enabled the
10 company to continue improving operating results.”

11 * * *

12 “We expect sequential top line growth of five to seven percent in the
13 second quarter,” Schramm said. “For the full year, we continue to expect
14 top line growth of more than 20 percent over 2010, and steadily
15 improving operating performance should enable the company to generate
16 cash from operations and be profitable on a non-GAAP basis going
17 forward.”

18 22. On May 5, 2011, Maxwell filed its first quarter 2011 Form 10-Q with the
19 SEC. Defendants Schramm and Royal signed the Form 10-Q, which referred to
20 Maxwell’s Form 10-K for the year ended December 31, 2010, as well as to the
21 Company’s accounting policies. Schramm and Royal each signed internal control
22 certifications, affirming that they were responsible for designing “such internal control
23 over financial reporting, or caused [had] such internal control over financial reporting
24 to be designed under [their] supervision, to provide reasonable assurance regarding the
25 reliability of financial reporting and the preparation of financial statements for
26 external purposes in accordance with generally accepted accounting principles,” and
27 that they had reported to the board and auditors “[a]ll significant deficiencies and
28 material weaknesses in the design or operation of internal controls over financial
reporting which are reasonably likely to adversely affect the registrant’s ability to
record, process, summarize and report financial information.”

29 23. On July 28, 2011, Maxwell issued a press release announcing its second
30 quarter 2011 financial results. The Company reported a net loss of \$1.2 million, or
(\$0.04) diluted EPS, and revenue of \$38.5 million for the second quarter ended June
30, 2011. The release stated in part:

1 to Maxwell's Form 10-K for the year ended December 31, 2010, as well as to the
2 Company's accounting policies.

3 28. On February 16, 2012, Maxwell issued a press release announcing its
4 fourth quarter and fiscal year ended 2011 financial results. The Company reported net
5 income of \$1.6 million, or \$0.06 diluted EPS, and revenue of \$42.5 million for the
6 fourth quarter ended December 31, 2011. Further, the Company reported net income
7 of \$849,000, or \$0.03 diluted EPS, and revenue of \$157.3 million for the fiscal year
8 ended December 31, 2011. The release stated in part:

9 "Emerging ultracapacitor applications in backup power and stop-
10 start idle elimination systems in micro hybrid autos augmented ongoing
11 contributions from established customer bases in wind energy and hybrid
12 bus drive systems to drive steadily increasing sales growth in 2011," said
13 David Schramm, Maxwell's president and chief executive officer. "We
14 have also introduced new products for the uninterruptible power supply
15 (UPS) and engine starting markets that we expect to drive additional
16 growth in the coming year."

17 * * *

18 "Considering the impact of the Chinese New Year holidays and historic
19 seasonality, we expect revenue to be lower by as much as five percent
20 sequentially in the current first quarter compared with that reported in
21 the fourth quarter," Schramm said. "However, as previously stated, for
22 the full year, we expect sales to grow at a rate similar to that experienced
23 in 2011, and steadily improving operating performance should enable the
24 Company to continue to be profitable on a non-GAAP basis."

25 29. On February 16, 2012, Maxwell filed its 2011 Form 10-K with the SEC.
26 Defendants Schramm and Royal signed the Form 10-K, which stated in relevant part:

27 *Assumptions and Approach Used.* Product revenue is recognized
28 when all of the following criteria are met: (1) persuasive evidence of an
arrangement exists (upon contract signing or receipt of an authorized
purchase order from a customer); (2) title passes to the customer at either
shipment from our facilities or receipt at the customer facility, depending
on shipping terms; (3) price is deemed fixed or determinable and free of
contingencies or significant uncertainties; and (4) collectability is
reasonably assured. Customer purchase orders and/or contracts are
generally used to determine the existence of an arrangement. Shipping
documents are used to verify product delivery. We assess whether a price
is fixed or determinable based upon the payment terms associated with
the transaction. If a volume discount is offered, revenue is recognized at
the lowest price offered to the customer. We assess the collectability of
accounts receivable based primarily upon creditworthiness of the
customer as determined by credit checks and analysis, as well as the
customer's payment history.

1 uncertain,” said David Schramm, Maxwell’s president and chief
2 executive officer. “On the plus side, careful expense controls, strong
3 demand for ultracapacitor products for hybrid electric transit buses and
4 wind turbine blade pitch systems in China and steady performance by
our high voltage and microelectronics groups have enabled us to
continue growing and improving bottom line performance in a difficult
economic environment.”

5 * * *

6 “Based on current order flow and customer forecasts in our core
7 ultracapacitor market segments, we expect sequential top line growth of
8 seven to 10 percent in the third quarter,” Schramm said. “That should
9 keep us on track to achieve growth in the range of 15 to as much as 20
percent for the full year and support ongoing improvement in operating
performance.”

10 34. On August 2, 2012, Maxwell filed its second quarter 2012 Form 10-Q
11 with the SEC. Defendants Schramm and Royal signed the Form 10-Q, which referred
12 to Maxwell’s Form 10-K for the year ended December 31, 2011, as well as to the
13 Company’s accounting policies.

14 35. On October 25, 2012, , Maxwell issued a press release announcing its
15 third quarter 2012 financial results. The Company reported net income of \$5.4
16 million, or \$0.19 diluted EPS, and revenue of \$43.9 million for the second quarter
17 ended June 30, 2012.

18 36. On October 30, 2012, Maxwell filed its third quarter 2012 Form 10-Q
19 with the SEC. Defendants Schramm and Royal signed the Form 10-Q, which referred
20 to Maxwell’s Form 10-K for the year ended December 31, 2011, as well as to the
21 Company’s accounting policies. The Form 10-Q further stated in part:

22 We are committed to maintaining disclosure controls and
23 procedures designed to ensure that information required to be disclosed
24 in our periodic reports filed under the Securities and [sic] Exchange Act
25 of 1934 (the “Exchange Act”) is recorded, processed, summarized and
26 reported within the time periods specified in the SEC’s rules and forms,
and that such information is accumulated and communicated to our
management, including our Principal Executive Officer and Principal
Financial Officer, as appropriate, to allow for timely decisions regarding
required disclosure.

27 Under the supervision and with the participation of our
28 management, including our Principal Executive Officer and Principal
Financial Officer, we conducted an evaluation of the effectiveness of the
design and operation of our disclosure controls and procedures as of

1 September 30, 2012, as such term is defined under Rule 13a-15(e)
2 promulgated under the Exchange Act. Based on this evaluation, our
3 Principal Executive Officer and Principal Financial Officer concluded
4 that our disclosure controls and procedures were effective as of the end
5 of the period covered by this Quarterly Report on Form 10-Q.

6 37. Then, on March 7, 2013, after the market closed, Maxwell issued a press
7 release disclosing that the Company would be restating previously issued financial
8 statements for 2011 and most of 2012 due to errors related to the timing of recognition
9 of revenue from sales to certain distributors. The Company further disclosed that the
10 financial statements should no longer be relied upon. The release stated in part:

11 Maxwell Technologies, Inc. announced today that on March 1, 2013, the
12 audit committee of its board of directors concluded that the previously
13 issued financial statements contained in its annual report on Form 10-K
14 for the year ended December 31, 2011, and all unaudited quarterly
15 reports on Form 10-Q in 2011 and 2012 (collectively, the “Prior
16 Periods”), as well [sic] its selected financial data for the related periods,
17 should no longer be relied upon because of errors in those financial
18 statements. The errors relate to the timing of recognition of revenue
19 from sales to certain distributors.

20 In addition to the financial statements for the Prior Periods, related
21 press releases furnished on current reports on Form 8-K, reports and
22 stockholder communications describing its financial statements for the
23 Prior Periods and the report of its independent registered public
24 accounting firm, McGladrey LLP (formerly McGladrey & Pullen, LLP),
25 related to the year ended December 31, 2011, should no longer be relied
26 upon.

27 The conclusion that the financial statements for the Prior Periods
28 cannot be relied upon is the result of an investigation by Maxwell’s audit
committee, with the assistance of independent outside counsel and
forensic accountants. The investigation commenced following receipt of
information concerning potential recognition of revenue prior to the
satisfaction of certain of the criteria required to be met to recognize
revenue.

The investigation discovered arrangements with certain
distributors regarding the payment terms for sales to such distributors
with respect to certain transactions. These arrangements had not been
communicated to Maxwell’s finance and accounting department and,
therefore, had not been considered when recording revenue on shipments
to these distributors. Based on the terms of the agreements with these
distributors as they were known to the finance and accounting
department, it had been the policy to account for revenue related to
shipments to these distributors as title passed to the distributor at either
shipment from Maxwell’s facilities or receipt at the distributor’s facility,
assuming all other revenue recognition criteria had been achieved. As a
result of the arrangements discovered during the investigation, Maxwell
does not believe that a fixed or determinable sales price existed at the

1 time of shipment to these distributors, nor was collection reasonably
2 assured, at least with respect to certain transactions. Therefore, the
3 revenue from such sales should not have been recognized at the time of
shipment to these distributors.

4 Maxwell believes that the impact to the Prior Periods of correcting
5 the errors in revenue recognition related to sales transactions to these
6 distributors will be to decrease previously reported revenues and profits
for 2011 and the first three quarters of 2012, and to increase revenue and
profits by the same amounts in subsequent periods.

7 Maxwell believes that the restatement of revenue related to these
8 distributors will decrease previously reported revenues for fiscal year
2011 by approximately \$6.5 million and decrease revenues in the first
three quarters of 2012 by approximately \$5.5 million in the aggregate.

9 Maxwell also believes that the restatement of revenue related to
10 these distributors will result in shipments to these distributors for which
11 title has passed to the distributor, but for which the revenue recognition
12 criteria has not been fully achieved, of approximately \$12.0 million as of
September 30, 2012. Of the shipments to these distributors that had not
13 been collected as of September 30, 2012, and therefore not recognized as
revenue, Maxwell collected \$4.6 million in the fourth quarter of 2012
and \$3.0 million to date in the first quarter of 2013, leaving \$4.4 million
14 outstanding that will be recognized as revenue as Maxwell receives
payments in the future.

15 Maxwell is in the process of evaluating deficiencies in its internal
16 controls over financial reporting and have preliminarily concluded that it
17 has material weaknesses in its internal controls over financial reporting
18 related to the identification and evaluation of revenue transactions which
deviate from contractually established payment terms and therefore has
preliminarily concluded that its internal controls over financial reporting
and disclosure are not effective. Maxwell intends to design and
implement controls to remediate these deficiencies.

19 As a result of the investigation, certain employees were terminated
20 and Maxwell's Sr. Vice President of Sales and Marketing resigned.

21 The Company, including the audit committee, has discussed the
22 foregoing matters with Maxwell's independent registered public
23 accounting firm, McGladrey LLP. The audit committee has authorized
and directed the officers of the Company to take the appropriate and
necessary actions to restate its financial statements for the Prior Periods.
24 Maxwell intends to file restated financial statements for the Prior Periods
as soon as reasonable practicable.

25 38. The Company further disclosed in a Form 8-K filing on March 7, 2013
26 that defendant Andrews had resigned, effective March 1, 2013, as a direct result of the
27 ongoing investigation being performed by the audit committee and Maxwell's Board
28 of Directors.

1 **NO SAFE HARBOR**

2 43. Maxwell’s verbal “Safe Harbor” warnings accompanying its oral
3 forward-looking statements (“FLS”) issued during the Class Period were ineffective to
4 shield those statements from liability.

5 44. The defendants are also liable for any false or misleading FLS pleaded
6 because, at the time each FLS was made, the speaker knew the FLS was false or
7 misleading and the FLS was authorized and/or approved by an executive officer of
8 Maxwell who knew that the FLS was false. None of the historic or present tense
9 statements made by defendants were assumptions underlying or relating to any plan,
10 projection or statement of future economic performance, as they were not stated to be
11 such assumptions underlying or relating to any projection or statement of future
12 economic performance when made, nor were any of the projections or forecasts made
13 by defendants expressly related to or stated to be dependent on those historic or
14 present tense statements when made.

15 **CLASS ACTION ALLEGATIONS**

16 45. Plaintiff brings this action as a class action pursuant to Rule 23 of the
17 Federal Rules of Civil Procedure on behalf of all persons who purchased or otherwise
18 acquired Maxwell common stock during the Class Period (the “Class”). Excluded
19 from the Class are defendants and their families, the officers and directors of the
20 Company, at all relevant times, members of their immediate families and their legal
21 representatives, heirs, successors or assigns and any entity in which defendants have
22 or had a controlling interest.

23 46. The members of the Class are so numerous that joinder of all members is
24 impracticable. The disposition of their claims in a class action will provide substantial
25 benefits to the parties and the Court. Maxwell has nearly 29.2 million shares of stock
26 outstanding, owned by hundreds if not thousands of persons.

27 47. There is a well-defined community of interest in the questions of law and
28 fact involved in this case. Questions of law and fact common to the members of the

1 Class which predominate over questions which may affect individual Class members
2 include:

- 3 (a) Whether the 1934 Act was violated by defendants;
- 4 (b) Whether defendants omitted and/or misrepresented material facts;
- 5 (c) Whether defendants' statements omitted material facts necessary to
6 make the statements made, in light of the circumstances under which they were made,
7 not misleading;
- 8 (d) Whether defendants knew or deliberately disregarded that their
9 statements were false and misleading;
- 10 (e) Whether the price of Maxwell common stock was artificially
11 inflated; and
- 12 (f) The extent of damage sustained by Class members and the
13 appropriate measure of damages.

14 48. Plaintiff's claims are typical of those of the Class because plaintiff and
15 the Class sustained damages from defendants' wrongful conduct.

16 49. Plaintiff will adequately protect the interests of the Class and has retained
17 counsel who are experienced in class action securities litigation. Plaintiff has no
18 interests which conflict with those of the Class.

19 50. A class action is superior to other available methods for the fair and
20 efficient adjudication of this controversy.

21 **COUNT I**

22 **For Violation of §10(b) of the 1934 Act and Rule 10b-5**
23 **Against All Defendants**

24 51. Plaintiff incorporates ¶¶1-50 by reference.

25 52. During the Class Period, defendants disseminated or approved the false
26 statements specified above, which they knew or deliberately disregarded were
27 misleading in that they contained misrepresentations and failed to disclose material
28

1 facts necessary in order to make the statements made, in light of the circumstances
2 under which they were made, not misleading.

3 53. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

4 (a) employed devices, schemes and artifices to defraud;

5 (b) made untrue statements of material facts or omitted to state
6 material facts necessary in order to make the statements made, in light of the
7 circumstances under which they were made, not misleading; or

8 (c) engaged in acts, practices and a course of business that operated as
9 a fraud or deceit upon plaintiff and others similarly situated in connection with their
10 purchases of Maxwell common stock during the Class Period.

11 54. Plaintiff and the Class have suffered damages in that, in reliance on the
12 integrity of the market, they paid artificially inflated prices for Maxwell common
13 stock. Plaintiff and the Class would not have purchased Maxwell common stock at
14 the prices they paid, or at all, if they had been aware that the market price had been
15 artificially and falsely inflated by defendants' misleading statements.

16 **COUNT II**

17 **For Violation of §20(a) of the 1934 Act**
18 **Against All Defendants**

19 55. Plaintiff incorporates ¶¶1-54 by reference.

20 56. The Individual Defendants acted as controlling persons of Maxwell
21 within the meaning of §20(a) of the 1934 Act. By virtue of their positions with the
22 Company, and ownership of Maxwell stock, the Individual Defendants had the power
23 and authority to cause Maxwell to engage in the wrongful conduct complained of
24 herein. Maxwell controlled the Individual Defendants and all of its employees. By
25 reason of such conduct, defendants are liable pursuant to §20(a) of the 1934 Act.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, plaintiff prays for judgment as follows:
28

