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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

February 2012 Grand Jury

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>ALAIN RIEDO,<br><br>Defendant. | Case No. 13CR3789 JM<br><br>I N D I C T M E N T<br><br>Title 18, U.S.C., Sec. 371 - Conspiracy; Title 15, U.S.C., Sec. 78dd-1 - Foreign Corrupt Practices Act Bribery; Title 15, U.S.C., Secs. 78m(b)(2)(A), 78m(b)(5), and 78ff(a) - Falsification of Books and Records; Title 15, U.S.C., Secs. 78m(b)(2)(B), 78m(b)(5), and 78ff(a) - Circumvention of Internal Accounting Controls; Title 18, U.S.C., Sec. 2 - Aiding and Abetting |

The grand jury charges:

**INTRODUCTORY ALLEGATIONS**

At all times relevant to this Indictment, unless otherwise specified:

1. Congress enacted the Foreign Corrupt Practices Act of 1977, as amended, Title 15, United States Code, Section 78dd-1, et seq. ("FCPA"), for the purpose of, among other things, making it unlawful for certain classes of persons and entities to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value to a foreign government official for the purpose

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of obtaining or retaining business for, or directing business to, any person.

2. In addition, the FCPA, Title 15, United States Code, Section 78m(b)(2)(A), required every issuer of a security registered with the SEC to make and keep books, records, and accounts that accurately and fairly reflect transactions and the distribution of the company's assets. Furthermore, the FCPA, Title 15, United States Code, Section 78m(b)(5), makes it illegal to falsify, or cause to be falsified, any book, record, or account required by Section 78m(b)(2)(A).

3. The FCPA, Title 15, United States Code, Section 78m(b)(2)(B), also required issuers to maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions were executed in accordance with management's general or specific authorization; (ii) transactions were recorded as necessary to (A) permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (B) maintain accountability for assets; (iii) access to assets was permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets was compared with the existing assets at reasonable intervals, and appropriate action was taken with respect to any differences. The FCPA, Title 15, United States Code, Section 78m(b)(5), makes it illegal to circumvent the system of internal accounting controls required by Section 78m(b)(2)(B).

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**RELEVANT ENTITIES AND INDIVIDUALS**

4. Maxwell Technologies, Inc. ("Maxwell"), a manufacturer of energy storage and power-delivery products, was incorporated in Delaware, headquartered in San Diego, California, and had manufacturing capabilities in the United States, Switzerland, and China. Maxwell's shares (traded on the NASDAQ under the ticker symbol "MXWL") were registered with the Securities and Exchange Commission ("SEC") pursuant to Section 12(g) of the Securities Exchange Act of 1934, and the company was required to file periodic reports with the SEC under Section 13 of the Securities Exchange Act. Accordingly, Maxwell was an "issuer" within the meaning of the FCPA, Title 15, United States Code, Section 78dd-1.

5. Maxwell Technologies S.A. ("Maxwell S.A."), previously known as Montena Components Ltd., was a wholly owned subsidiary of Maxwell that manufactured and sold high-voltage/high-tension ("HV/HT") capacitors in several countries, including China. Maxwell S.A. was incorporated and headquartered in Switzerland. Maxwell S.A.'s financial results were consolidated with Maxwell's throughout the relevant period. Maxwell S.A., although separately incorporated, shared employees, officers, and personnel, and, where specified, undertook the acts set forth herein with Maxwell's authorization and knowledge and subject to Maxwell's control.

6. Defendant ALAIN RIEDO, a citizen of Switzerland, was Maxwell S.A.'s Vice President and General Manager from in or around 2002 through in or around 2006. In or around May 2006, RIEDO was named a Senior Vice President and officer of Maxwell, and was granted a significant number of shares of Maxwell stock. From in or around May 2006 until his separation from the company in or around July 2009,

RIEDO continued as the General Manager of Maxwell S.A., exercised supervisory authority at Maxwell and Maxwell S.A., owned a significant number of Maxwell shares, and was evaluated and compensated, in part, based on Maxwell S.A.'s HV/HT sales.

7. "Co-conspirator A," a citizen of the United States, was a shareholder and senior officer of Maxwell in its San Diego office for portions of the relevant period. After Co-conspirator A's resignation, Co-conspirator A continued to be a Maxwell shareholder and to work part-time for Maxwell for the remainder of the relevant period pursuant to a consulting arrangement. During Co-conspirator A's time as an officer of Maxwell, Co-conspirator A worked closely with RIEDO on Maxwell S.A.'s operations.

8. "Co-conspirator B" was a manager in a business unit of Montena Components Ltd., and later Maxwell S.A. In or around 2003, Maxwell sold the division of Maxwell S.A. that employed Co-conspirator B. Both before and after this sale, Co-conspirator B discussed with RIEDO transactions between Maxwell S.A. and Chinese customers.

9. "Agent 1," a Chinese national, was Maxwell S.A.'s third-party agent from at least in or around 2002 until in or around May 2009, and was responsible for the sale of Maxwell HV/HT capacitors to customers in the People's Republic of China ("PRC" or "China").

10. Pinggao Group Co. Ltd. (formerly Pingdingshan High Voltage Switchgear Works) ("Pinggao Group") was a state-owned and state-controlled manufacturer of electric-utility infrastructure in Henan Province, PRC.

11. Xi-an XD High Voltage Apparatus Co., Ltd. a/k/a Xi'an Shinky High Voltage Electric Co., Ltd. ("Xi-an XD") was a state-owned and

state-controlled manufacturer of electric-utility infrastructure in Shaanxi Province, PRC.

12. Pinggao Group and Xi-an XD were each an "agency" and "instrumentality" of a foreign government, as those terms are used in the FCPA, Title 15, United States Code, Section 78dd-1(f)(1).

13. New Northeast Electric Shenyang HV Switchgear Co., Ltd. ("Shenyang HV") was a manufacturer of electric-utility infrastructure in Liaoning Province, PRC, which at times was either state-owned or substantially controlled by the Chinese government.

**Count 1**
(Conspiracy - 18 U.S.C. § 371)

**THE CONSPIRACY**

14. Paragraphs 1 through 13 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

15. Beginning no later than in or around October 2002, and continuing through in or around May 2009, defendant ALAIN RIEDO - being an officer, employee, stockholder, and agent of Maxwell, which was an issuer organized under the laws of the United States - and Agent 1, Co-conspirator A, Co-conspirator B, Maxwell, Maxwell S.A., and others known and unknown to the grand jury, did knowingly and willfully combine, conspire, and agree together and with each other to commit offenses against the United States, to wit:

A. to willfully make use of the mails and the means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value to, a foreign official, and to a person, while knowing that all or a portion of such money and thing of value

would be and had been offered, given, and promised, directly or indirectly, to a foreign official, for purposes of: (i) influencing acts and decisions of such foreign official in his or her official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duties of such official; (iii) securing an improper advantage; and (iv) inducing such foreign official to use his or her influence with a foreign government and instrumentalities thereof to affect and influence acts and decisions of such government and agencies and instrumentalities thereof, in order to assist RIEDO, Maxwell, and others in obtaining and retaining business for and with, and directing business to, Maxwell and others, in violation of Title 15, United States Code, Section 78dd-1(a); and

B. to knowingly and willfully falsify and cause to be falsified books, records, and accounts required to, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Maxwell, an issuer organized under the laws of the United States, and its assets, in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5), and 78ff(a).

C. to knowingly and willfully circumvent and cause to be circumvented internal accounting controls sufficient to provide reasonable assurances that: (i) transactions were executed in accordance with management's general or specific authorization; (ii) transactions were recorded as necessary to (A) permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (B) maintain accountability for assets; (iii) access to assets was permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets was

compared with the existing assets at reasonable intervals, and appropriate action was taken with respect to any differences, in violation of Title 15, United States Code, Sections 78m(b)(2)(B), 78m(b)(5), and 78ff(a).

**PURPOSE OF THE CONSPIRACY**

16. The conspiracy's purpose was to make corrupt payments to Chinese government officials, including officials at Pinggao Group, Xi-an XD and Shenyang HV, and to others, and to falsely record such payments on Maxwell's books, records and accounts, in order to obtain and retain business, prestige and increased compensation for RIEDO, Maxwell, Maxwell S.A., and others.

**MANNER AND MEANS OF THE CONSPIRACY**

17. The manner and means by which RIEDO and his co-conspirators sought to accomplish the purpose of the conspiracy included, among other things, the following:

A. RIEDO and Co-conspirator B would and did engage Agent 1 to market and sell Maxwell's HV/HT capacitors to Chinese consumers, including Pinggao Group, Xi-an XD, and Shenyang HV, and to other consumers.

B. RIEDO would and did discuss with Co-conspirators A and B, in person, in telephone conversations, and by e-mail, that Agent 1 would and did pay bribes to Chinese government officials, including government officials at Pinggao Group and Xi-an XD, and to others, in order to obtain HV/HT sales contracts.

C. Agent 1 would and did obtain quotes from Maxwell S.A. for HV/HT sales to prospective Chinese customers, but would and did ensure that the quotes contained a secret mark-up of approximately 20

percent, resulting in a higher total price to the Chinese customers for Maxwell S.A.'s equipment.

D. Agent 1 would and did sell Maxwell S.A.'s products to Chinese customers at the higher amount, and Maxwell S.A. would and did invoice the Chinese customers at the higher-priced rate.

E. Agent 1 would and did separately invoice Maxwell S.A. for the extra 20 percent added to the quoted prices, and would and did characterize the mark-up as either an "extra amount," "special arrangement," or "consulting" fee.

F. After the Chinese customers paid the inflated invoice price, RIEDO would and did cause Maxwell S.A. to pay Agent 1's invoices by transferring by wire the "extra amounts" to accounts controlled by Agent 1 in China and Hong Kong.

G. Agent 1 would and did corruptly pay the "extra amounts" to employees at Pinggao Group, Xi-an XD, and Shenyang HV.

H. RIEDO and Co-conspirator A would and did cause Maxwell S.A.'s books and records to falsely record the "extra amount" bribe payments as commissions, sales expenses, or consulting fees.

I. RIEDO would and did electronically transmit and cause to be electronically transmitted from Switzerland to Maxwell's headquarters in San Diego, California, Maxwell S.A.'s false books and records.

J. RIEDO and Co-conspirator A would and did cause the false characterization of Maxwell S.A.'s "extra amounts" to be included in Maxwell's books, records, and accounts, including Maxwell's publicly filed financial statements and SEC filings.

K. RIEDO and Co-conspirator A would and did hamper efforts by other Maxwell executives to learn the truth about operations and finances at Maxwell S.A.'s operations in Switzerland.

L. After Maxwell terminated its sales-representative arrangement with Agent 1, RIEDO would and did attempt to re-hire Agent 1 as the company's sales agent in China under the name of another company and against the instructions of Maxwell's CEO.

**Overt Acts**

18. In furtherance of the conspiracy and to effect and accomplish the objects thereof, at least one of the co-conspirators committed and caused to be committed the following overt acts, among others, within the Southern District of California and elsewhere:

A. On or about October 16, 2002, Co-conspirator B sent to RIEDO an email about the "China situation" and reminded RIEDO about their discussions during a recent trip to China and the need to discuss the extra-amount issue with Co-conspirator A.

B. On or about October 22, 2002, Co-conspirator B sent to RIEDO an email about certain amounts due to Agent 1 and asked about the billing and accounting for these kickbacks, now that Maxwell owned Maxwell S.A.

C. In or around October 2002, RIEDO met with Co-conspirators A and B at Maxwell S.A.'s offices and discussed the continued payment of "kickbacks" to Agent 1 in order to corruptly secure sales in China.

D. On or about November 8, 2002, Agent 1 sent to a Maxwell S.A. employee an email about Agent 1's need for extra-amount payments, commenting that "we have to pay to customers the extra amounts . . . they push us nearly every week . . . ."

E. On or about November 19, 2002, RIEDO directed Co-conspirator B to pay Agent 1 the extra amounts as if they were commissions, and

then to have Agent 1 allocate the corrupt payments to the various Chinese customers.

F. On or about November 20, 2002, in response to an email from a Maxwell employee that said that an extra-amount payment appeared to be "a kick-back, pay-off, bribe, whatever you want to call it, given that we cannot obtain an invoice or other document that identifies what the payment is for. This type of payment is in violation of US trade laws," Co-conspirator A directed that no further emails were to be written about the topic.

G. On or about October 9, 2003, Agent 1 emailed Co-conspirator B about an extra-amount payment that had been inadvertently remitted by Maxwell S.A. to a Chinese customer, instead of Agent 1's bank account, saying "It is a big mistake, because it shouldn't be regarded as money to be owned by [the customer] officially, but privately and confidentially. It may cause [a] serious problem to the current managers."

H. On or about February 7, 2005, RIEDO sent to Agent 1 an email attempting to negotiate a smaller "extra amount" payment on a sale to Shenyang HV.

I. In or around June 2005, RIEDO met with Agent 1 in China and discussed how Maxwell S.A. would increase sales with Shenyang HV and Pinggao Group if Maxwell S.A. agreed to continue making corrupt payment of extra amounts.

J. On or about June 17, 2005, Agent 1 sent to RIEDO and others at Maxwell S.A. an email explaining that, when Maxwell refused to pay "extra amounts" to officials at a Chinese customer, Maxwell lost a sale to a competitor, and noting that since Maxwell has again agreed

to pay "extra amounts" the Chinese customer has placed orders with Maxwell.

K. On or about August 16, 2006, RIEDO signed a "sub-certification" as part of Maxwell's Sarbanes-Oxley process and falsely certified that Maxwell's SEC Form 10-Q for the second quarter of 2006 "did not contain an untrue statement of material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made . . . not misleading," even though RIEDO knew that the books and records falsely recorded the extra-amount payments as commissions instead of bribes or kickbacks.

L. On or about August 17, 2006, RIEDO caused a Maxwell S.A. employee to transmit RIEDO's false "sub-certification" from Maxwell S.A. in Switzerland to Maxwell in San Diego, California.

M. On or about July 12, 2007, RIEDO caused a Maxwell S.A. employee to send from Switzerland to San Diego, California, an email containing Maxwell S.A. financial data that falsely characterized corrupt payments made to Agent 1.

N. On or about October 8, 2007, RIEDO caused a Maxwell S.A. employee to send from Switzerland to San Diego, California, an email containing Maxwell S.A. financial data that falsely characterized corrupt payments made to Agent 1.

O. On or about September 19, 2008, RIEDO sent an e-mail to Maxwell's CFO falsely telling Maxwell's CFO that, when Agent 1 "does a quotation to the [Chinese] customer and increases [Maxwell's] price . . . the difference between our quotation and the final price negotiated by [Agent 1] is for [Agent 1]" and asking the CFO to

release the "payment for [Agent 1]," so as not to "disturb our business in China . . ."

P. On or about September 26, 2008, RIEDO sent an e-mail to Agent 1 with a document entitled "FCPA letter," asking Agent 1 to sign and return the letter "in order to proceed to the payment of the extra amount."

Q. On or about September 26, 2008, after receiving the signed copy of the "FCPA letter" from Agent 1, RIEDO sent the document by email to the CFO of Maxwell in San Diego, California, in order to secure the payment of extra amounts to Agent 1.

R. On or about October 10, 2008, RIEDO caused a Maxwell S.A. employee to send from Switzerland to San Diego, California, an email containing Maxwell S.A. financial data that falsely characterized corrupt payments made to Agent 1.

S. On or about December 12, 2008, RIEDO caused a Maxwell S.A. employee to send from Switzerland to San Diego, California, an email containing Maxwell S.A. financial data that falsely characterized corrupt payments made to Agent 1.

T. On or about February 3, 2009, RIEDO sent to a Maxwell employee in San Diego, California, an e-mail attaching a completed "Directors', Officers', and 5% Stockholders' Questionnaire" in which RIEDO answered "no" to a series of questions relating to the FCPA, including whether RIEDO had (1) "any knowledge or reason to believe that [there]. . . have been or may have been. . . any bribes or kickbacks to government officials or their relatives, or any other payments to such persons, whether or not legal, to obtain or retain business or to receive favorable treatment with regard to business" and (2) "any knowledge or reason to believe that [there]. . . have

been or may have been. . . any bribes or kickbacks to persons other than government officials, or to relatives of such persons, or any other payments to such persons or their relatives, whether or not legal, to obtain or retain business or to receive favorable treatment with regard to business," when in fact RIEDO knew that Agent 1 was, directly and indirectly, receiving extra-amount payments and passing those payments along to the employees of Chinese state-owned entities and other companies in order to obtain and retain business.

U. On or about March 31, 2009, RIEDO initialed invoice no. 20090331-2 authorizing the transfer by wire, from Maxwell S.A. in Switzerland to Agent 1 in Hong Kong, CHF 200,000 as payment of a purported "consulting fee" for a contract with Pingdingshan.

V. On or about April 15, 2009, RIEDO caused a Maxwell S.A. employee to send from Switzerland to San Diego, California, an email containing Maxwell S.A. financial data that falsely characterized corrupt payments made to Agent 1.

All in violation of Title 18, United States Code, Section 371.

**Counts 2-3**

(Foreign Corrupt Practices Act - 15 U.S.C. § 78dd-1)

19. Paragraphs 1 through 13 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

20. From at least in or around October 2002 through in or around May 2009, within the Southern District of California and elsewhere, defendant ALAIN RIEDO, being an officer, employee, stockholder, and agent of Maxwell, which was an issuer organized under the laws of the United States, did willfully use and cause to be used the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of

the payment of money to a person, while knowing that all or a portion of such money would be and had been offered, given, and promised, directly and indirectly, to foreign officials, for purposes of: (i) influencing acts and decisions of such foreign officials in their official capacities; (ii) inducing such foreign officials to do and omit to do acts in violation of the lawful duties of such officials; (iii) securing an improper advantage; and (iv) inducing such foreign officials to use their influence with a foreign government and instrumentalities thereof to affect and influence acts and decisions of such government or instrumentalities, in order to assist RIEDO, Maxwell, and others in obtaining and retaining business for and with, and directing business to, Maxwell and others, as follows:

| Count | Date | Means and Instrumentalities of Interstate Commerce |
|---|---|---|
| 2 | 09/19/08 | E-mail sent by RIEDO from Switzerland to Maxwell's CFO in San Diego, California, asking Maxwell's CFO to release funds to Agent 1 to retain business in China. |
| 3 | 09/26/08 | E-mail sent by RIEDO from Switzerland to Maxwell's CFO in San Diego, California, attaching an "FCPA" certificate and asking him to "proceed" in approving payment of an "extra amount." |

All in violation of Title 15, United States Code, Section 78dd-1, and Title 18, United States Code, Section 2.

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**Counts 4-8**

(Falsification of Books and Records, Foreign Corrupt Practices Act - 15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5), 78ff(a))

21. Paragraphs 1 through 13 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

22. From at least in or around October 2002 through in or around May 2009, within the Southern District of California and elsewhere, defendant ALAIN RIEDO, being an officer, employee, stockholder, and agent of Maxwell, which was an issuer organized under the laws of the United States, knowingly and willfully, directly and indirectly, falsified and caused to be falsified books, records, and accounts required to, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Maxwell, an issuer of securities registered pursuant to the Securities and Exchange Act of 1934; to wit, defendant RIEDO falsely characterized and caused to be characterized as sales-related expenses over $2 million in corrupt "extra amount" and "special arrangement" bribes paid through Agent 1, in particular Maxwell books, records, and accounts, including those transmitted from Switzerland to California on or about the following dates:

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| Count | Date | Falsified Record |
|---|---|---|
| 4 | 07/12/07 | Maxwell S.A. financial data that falsely characterized corrupt payments made to Agent 1 |
| 5 | 10/08/07 | Maxwell S.A. financial data that falsely characterized corrupt payments made to Agent 1 |
| 6 | 10/10/08 | Maxwell S.A. financial data that falsely characterized corrupt payments made to Agent 1 |
| 7 | 12/12/08 | Maxwell S.A. financial data that falsely characterized corrupt payments made to Agent 1 |
| 8 | 04/15/09 | Maxwell S.A. financial data that falsely characterized corrupt payments made to Agent 1 |

All in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5), and 78ff(a), and Title 18, United States Code, Section 2.

**Count 9**

(Circumvention of Required Internal Accounting Controls, Foreign Corrupt Practices Act - 15 U.S.C. §§ 78m(b)(2)(B), 78m(b)(5), 78ff(a))

23. Paragraphs 1 through 13 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

24. From at least in or around October 2002 through in or around May 2009, within the Southern District of California and elsewhere, defendant ALAIN RIEDO, being an officer, employee, stockholder, and agent of Maxwell, which was an issuer organized under the laws of the United States, knowingly and willfully, directly and indirectly, circumvented and caused to be circumvented a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for

assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

All in violation of Title 15, United States Code, Sections 78m(b)(2)(B), 78m(b)(5), and 78ff(a), and Title 18, United States Code, Section 2.

Dated: October 15, 2013.

A TRUE BILL:

Foreperson

LAURA E. DUFFY
United States Attorney

By:
ERIC BESTE
Assistant U.S. Attorney

REBECCA S. KANTER
Assistant U.S. Attorney

JEFFREY H. KNOX
Chief
Criminal Division, Fraud Section
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By:
STEPHEN J. SPIEGELHALTER
Trial Attorney, Fraud Section
Special Assistant U.S. Attorney