

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ANTHONY FRANCHI, Individually and On)	
Behalf of All Others Similarly Situated,)	
)	
Plaintiff,)	
)	Case No. _____
v.)	
)	JURY TRIAL DEMANDED
ORBOTECH LTD., YOCHAI RICHTER,)	
YEHUDIT BRONICKI, DAN FALK,)	<u>CLASS ACTION</u>
MIRON KENNETH, JACOB RICHTER,)	
ELIEZER TOKMAN, SHIMON ULLMAN,)	
ARIE WEISBERG, AVNER HERMONI,)	
MICHAEL ANGHEL, JOSEPH TENNE,)	
KLA-TENCOR CORPORATION, and)	
TIBURON MERGER SUB)	
TECHNOLOGIES LTD.,)	
)	
Defendants.)	

COMPLAINT FOR VIOLATION OF THE SECURITIES EXCHANGE ACT OF 1934

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:

NATURE OF THE ACTION

1. This action stems from a proposed transaction announced on March 19, 2018 (the “Proposed Transaction”), pursuant to which Orbotech Ltd. (“Orbotech” or the “Company”) will be acquired by KLA-Tencor Corporation (“Parent”) and Parent’s wholly-owned subsidiary, Tiburon Merger Sub Technologies Ltd. (“Merger Sub,” and together with Parent, “KLA”).

2. On March 18, 2018, Orbotech’s Board of Directors (the “Board” or “Individual Defendants”) caused the Company to enter into an agreement and plan of merger (the “Merger Agreement”) with KLA. Pursuant to the terms of the Merger Agreement, if the Proposed Transaction is approved by Orbotech’s shareholders and completed, Orbotech’s shareholders

will receive \$38.86 in cash and 0.25 of a share of Parent common stock for each share of Orbotech common stock they own.

3. On May 16, 2018, defendants filed a Form S-4 registration statement (the “Registration Statement”) with the United States Securities and Exchange Commission (“SEC”) in connection with the Proposed Transaction.

4. The Registration Statement omits material information with respect to the Proposed Transaction, which renders the Registration Statement false and misleading. Accordingly, plaintiff alleges herein that defendants violated Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “1934 Act”) in connection with the Registration Statement.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the claims asserted herein pursuant to Section 27 of the 1934 Act because the claims asserted herein arise under Sections 14(a) and 20(a) of the 1934 Act and Rule 14a-9.

6. 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.

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

PARTIES

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

9. Defendant Orbotech is a company organized under the laws of the State of Israel

and maintains its principal executive offices at 7 Sanhedrin Boulevard, North Industrial Zone, Yavne 8110101 Israel. Orbotech's common stock is traded on the NasdaqGS under the ticker symbol "ORBK." Orbotech is a party to the Merger Agreement.

10. Defendant Yochai Richter ("Y. Richter") serves as Active Chairman of the Board of Orbotech and has been a director of Orbotech since 1992.

11. Defendant Yehudit Bronicki ("Bronicki") has served as a director of Orbotech since 2000.

12. Defendant Dan Falk ("Falk") has served as a director of Orbotech since 1997.

13. Defendant Miron Kenneth ("Kenneth") has served as a director of Orbotech since 2014.

14. Defendant Dr. Jacob Richter ("J. Richter") has served as a director of Orbotech since 2012.

15. Defendant Eliezer Tokman ("Tokman") has served as a director of Orbotech since 2007.

16. Defendant Shimon Ullman ("Ullman") has served as a director of Orbotech since 1992.

17. Defendant Arie Weisberg ("Weisberg") has served as a director of Orbotech since 2010.

18. Defendant Avner Hermoni ("Hermoni") has served as a director of Orbotech since 2012.

19. Defendant Michael Anghel ("Anghel") has served as a director of Orbotech since 2008.

20. Defendant Joseph Tenne ("Tenne") has served as a director of Orbotech since

2014.

21. The defendants identified in paragraphs 10 through 20 are collectively referred to herein as the “Individual Defendants.”

22. Defendant Parent is a Delaware corporation and a party to the Merger Agreement.

23. Defendant Merger Sub is a company organized under the laws of the State of Israel, a wholly-owned subsidiary of Parent, and a party to the Merger Agreement.

CLASS ACTION ALLEGATIONS

24. Plaintiff brings this action as a class action on behalf of himself and the other public stockholders of Orbotech (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.

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

26. The Class is so numerous that joinder of all members is impracticable. As of May 14, 2018, there were approximately 48,506,282 shares of Orbotech ordinary stock outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout the country.

27. Questions of law and fact are common to the Class, including, among others, whether defendants violated the 1934 Act and whether defendants will irreparably harm plaintiff and the other members of the Class if defendants’ conduct complained of herein continues.

28. 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.

29. 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.

30. 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

31. Orbotech was incorporated in Israel on February 8, 1981 under the name "Optrotech Ltd." Effective October 27, 1992, the Company acquired all the ordinary shares of Orbot Systems Ltd. ("Orbot"), and subsequently merged Orbot with and into the Company. In connection with the merger, the Company changed its name to "Orbotech Ltd." on October 27, 1992.

32. Orbotech is a global innovator and supplier of enabling solutions used to manufacture the world's most sophisticated consumer and industrial electronic products and is part of a select group of companies whose technology is literally driving the future of electronics. The Company's core business lies in enabling electronic device manufacturers to inspect, test, and measure printed circuit boards ("PCB"s) and flat panel displays ("FPD"s) to verify their quality ("reading"); pattern the desired electronic circuitry on the relevant substrate and perform three-dimensional shaping of metalized circuits on multiple surfaces ("writing"); and utilize advanced vacuum deposition and etching processes in semiconductor device ("SD") and

semiconductor manufacturing and to perform laser drilling of electronic substrates (“connecting”). Orbotech refers to this “reading,” “writing,” and “connecting” as enabling the “Language of Electronics.”

33. The products designed, developed, manufactured, marketed, and serviced by the Company include: direct imaging, automated optical inspection (“AOI”), automated optical shaping, via formation laser drilling tools, additive printing solutions (previously known as inkjet printing) and other production systems used in the manufacture of PCBs; AOI, test, repair and process monitoring systems used in the manufacture of FPDs; and etch, physical vapor deposition, chemical vapor deposition and molecular vapor deposition equipment for use in the manufacture of SDs, such as micro-electro-mechanical systems, advanced semiconductor packaging, power and radio frequency devices and high brightness light emitting diode devices.

34. The Company also markets computer-aided manufacturing and engineering solutions for PCB production, which are designed and developed by Frontline. In addition, through its subsidiary Orbotech LT Solar, LLC, the Company is engaged in the research, development and marketing of products for the deposition of thin film coating of various materials on crystalline silicon photovoltaic wafers for solar energy panels through plasma-enhanced chemical vapor deposition; and, through its subsidiary Orbograph Ltd., in the development and marketing of character recognition solutions to banks, financial and other payment processing institutions and healthcare providers.

35. The Company continues to develop technologies for use in other applications both within and outside the electronics industry and also regularly and selectively evaluates opportunities to acquire complementary technologies to further diversify its business. The Company derives a significant portion of its revenues from the service and support of its

substantial installed base of products.

36. On March 18, 2018, the Individual Defendants caused the Company to enter into the Merger Agreement with KLA. Pursuant to the terms of the Merger Agreement, if the Proposed Transaction is approved by Orbotech's shareholders and completed, Orbotech's shareholders will receive \$38.86 in cash and 0.25 of a share of Parent common stock for each share of Orbotech common stock they own.

37. Based on the closing stock price of Parent common stock on March 16, 2018, the last trading day before public announcement of the Proposed Transaction, the implied value of the merger consideration was \$69.02 per share of Orbotech common stock.

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

KLA-Tencor Corporation (NASDAQ: KLAC) ("KLA-Tencor") and Orbotech Ltd. ("Orbotech") today announced they had entered into a definitive agreement pursuant to which KLA-Tencor will acquire Orbotech Ltd. ("Orbotech") for \$38.86 in cash and 0.25 of a share of KLA-Tencor common stock in exchange for each ordinary share of Orbotech, implying a total consideration of approximately \$69.02 per share. The transaction values Orbotech at an equity value of approximately \$3.4 billion and an enterprise value of \$3.2 billion. In addition, KLA-Tencor announced a \$2 billion share repurchase authorization. The share repurchase program is targeted to be completed within 12 to 18 months following the close of this transaction.

With this acquisition, KLA-Tencor will significantly diversify its revenue base and add \$2.5 billion of addressable market opportunity in the high-growth printed circuit board ("PCB"), flat panel display ("FPD"), packaging, and semiconductor manufacturing areas. The broader portfolio of leading products, services, and solutions, as well as increased exposure to technology megatrends, will support KLA-Tencor's long-term revenue and earnings growth targets. . . .

Total cost synergies are expected to be approximately \$50 million on an annualized basis within 12 to 24 months following the closing of the transaction, and the transaction is expected to be immediately accretive to KLA-Tencor's revenue growth model, non-GAAP earnings and free cash flow per share.

The transaction has been approved by the Board of Directors of each company and is expected to close by the fourth quarter of calendar year 2018, subject to approval by Orbotech's shareholders, required regulatory approvals and the

satisfaction of the other customary closing conditions. No approval by KLA-Tencor stockholders is required. The transaction is not subject to any financing conditionality. KLA-Tencor intends to fund the cash portion of the purchase price with cash from the combined company's balance sheet. In addition, KLA-Tencor intends to raise approximately \$1 billion in new long-term debt financing to complete the share repurchase.

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

39. Defendants filed the Registration Statement with the SEC in connection with the Proposed Transaction.

40. The Registration Statement omits material information with respect to the Proposed Transaction, which renders the Registration Statement false and misleading.

41. The Registration Statement omits material information regarding the Company's financial projections and the valuation analysis performed by the Company's financial advisor in connection with the Proposed Transaction, Barclays Capital Inc. ("Barclays").

42. 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. Further, 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.

43. The Registration Statement discloses certain projections of Orbotech for non-GAAP (generally accepted accounting principles) metrics that were used by Barclays to perform its valuation analyses in connection with the Proposed Transaction. Specifically, the Registration Statement discloses non-GAAP projections of Non-GAAP Operating Income, Adjusted EBITDA, Non-GAAP Net Income, Non-GAAP EPS, and Unlevered Free Cash Flow.

The Registration Statement, however, fails to provide stockholders with the necessary line item projections for the metrics used to calculate these non-GAAP measures or otherwise reconcile the non-GAAP projections to the most comparable GAAP measures. Without the disclosure of this material information, stockholders are at risk of being misled into believing that the disclosed projections are subject to standard calculations, or are similar to financial measures used by other companies that are calculated in accordance with GAAP. As such, to avoid misleading stockholders, defendants must disclose the line item projections used to calculate the Company's non-GAAP projections or otherwise reconcile the non-GAAP projections to the most comparable GAAP measures.

44. With respect to Barclays' Selected Comparable Company Analysis for Orbotech and KLA-Tencor, the Registration Statement fails to disclose the individual multiples and financial benchmarking metrics for each of the companies observed by Barclays in its analyses. The omission of this information is material because defendants failed to disclose *any* multiples (including the low, mean, median, and high multiples) of the selected companies. Instead, defendants merely disclosed the multiple ranges that Barclays selected and applied to the Company's and Parent's relevant statistics.

45. The disclosure of the observed multiples is necessary because they are a crucial element of the comparable company analysis, as the analysis is fundamentally based on comparison and relative valuation. Without the multiples and financial benchmarking metrics of the selected companies, stockholders cannot observe whether the selected companies truly are comparable to the Company and Parent, and whether the multiple ranges selected by Barclays are representative of actual comparable companies. Further, this information is necessary because, rather than use the range of multiples based on the selected companies to derive the

implied values of the Company and Parent, Barclays made certain “qualitative judgments” to select its chosen range of multiples to make the merger consideration appear fair.

46. Stockholders therefore are being misled into believing that Barclays’ Selected Comparable Company Analyses support the supposed fairness of the merger consideration. The failure to disclose the individual multiples and financial metrics of the selected companies therefore was a material omission and renders the Registration Statement materially misleading by incorrectly implying that Barclays’ analyses support the fairness of the merger consideration.

47. With respect to Barclays’ Discounted Cash Flow Analysis, the Registration Statement fails to disclose: (i) the line items used to calculate the Company’s projections of unlevered free cash flows for years 2018 through 2021; (ii) the specific numerical inputs and assumptions underlying the discount rates range of 10% to 12% selected by Barclays; and (iii) the perpetuity growth rates implied from Barclays’ exit multiple method analysis, and the terminal exit multiples implied by Barclays’ perpetuity growth method analysis. The failure to disclose this information causes the Registration Statement to be misleading in that it makes the merger consideration appear fair.

48. The omission of this material information renders the Registration Statement false and misleading, including, *inter alia*, the following sections of the Registration Statement: (i) Opinion of Orbotech’s Financial Advisor; and (ii) Certain Projections of Orbotech.

49. The Registration Statement omits material information relating to potential conflicts of interest of Barclays. Due to the central role played by investment banks in the evaluation, exploration, selection, and implementation of strategic alternatives, stockholders are entitled to the full disclosure of investment banker compensation and all potential conflicts of interest.

50. The Registration Statement states the following with respect to the services that Barclays has provided to the Company and Parent in the past:

Barclays has performed various investment banking and financial services for Orbotech and KLA-Tencor in the past, and expects to perform such services in the future, and has received, and expects to receive, customary investment banking fees for such services. Specifically, in the past two years, Barclays has performed the following investment banking services: (i) acted as sole bookrunner on Orbotech's \$102 million registered equity block trade offering in June 2016 and (ii) acted as a lender under an existing credit facility for, and provided corporate banking services to, one of Orbotech's subsidiaries.

51. The Registration Statement, however, fails to disclose: (i) the amount of fees Barclays has earned from the Company in connection with its past services; and (ii) the nature and timing of the services that Barclays has provided to Parent or its affiliates in the past, as well as the amount of compensation Barclays has earned in connection with those services.

52. The omission of this information is material because, without this information, stockholders cannot assess the magnitude of Barclays' potential conflicts of interest. This omission causes the Registration Statement to be misleading because stockholders cannot assess Barclays' incentive to skew its valuation analyses that have been touted to shareholders to support the fairness of the merger consideration.

53. The omission of this material information renders the Registration Statement false and misleading, including, *inter alia*, the following sections of the Registration Statement: (i) Opinion of Orbotech's Financial Advisor; and (ii) Background of the Merger.

54. The Registration Statement omits material information relating to the background leading to the Proposed Transaction and potential conflicts of interest of the Company's named executive officers. The Company's stockholders are entitled to an accurate description of the process the directors used in coming to their decision to support the Proposed Transaction, and

any potential conflicts of interest of Company management or Board members that could have had an impact on their decision to pursue and approve the Proposed Transaction.

55. The Registration Statement indicates that, in connection with the Proposed Transaction, Parent caused the Company to enter into new employment agreements with certain of the Company's executive officers, including Asher Levy (the Company's CEO), Amichai Steimberg (the Company's President and Chief Operating Officer), and Y. Richter (the Company's Active Chairman), pursuant to which each executive officer will remain employed and continue to be compensated following the close of the Proposed Transaction. The Registration Statement, however, fails to disclose the nature and the timing of the first overtures or discussions regarding post-employment between representatives of Parent and Orbotech, including who participated in such conversations.

56. The disclosure of this information is necessary because the post-merger employment discussions occurred during the negotiations over the merger terms. Stockholders are entitled to this information because promises of future employment and its resulting economic benefits could cause Company employees to agree to a lower merger consideration to the detriment of the Company's stockholders. Indeed, Orbotech's executive officers principally negotiated the financial terms, including the price, of the Proposed Transaction, and agreed to a price that was lower than the Board's only counter offer of \$68.75.

57. Further, the Registration Statement indicates that, in connection with the consideration and negotiation of the Proposed Transaction, the Board formed a transaction committee consisting of Individual Defendants Y. Richter, Anghel, Falk, Tenne, and Weisberg, and that the transaction committee engaged Goldman Sachs Israel LLC ("Goldman Sachs") to "provide its views to the transaction committee with respect to the proposed transaction." The

Registration Statement, however, fails to disclose the reason the transaction committee deemed it necessary to engage Goldman Sachs in connection with the Proposed Transaction, despite the fact that the Board had already engaged Barclays.

58. Further, the Registration Statement fails to disclose: (i) the amount of compensation Goldman Sachs earned in connection with its services related to the Proposed Transaction; (ii) whether Goldman Sachs has provided any other services to Orbotech or Parent in the past and, if so, the amount of compensation it has earned; and (iii) a fair summary of the advice or any analyses that Goldman Sachs provided to the transaction committee.

59. The omission of this material information renders the Registration Statement false and misleading, including, *inter alia*, the following sections of the Registration Statement: (i) Opinion of Orbotech's Financial Advisor; (ii) Background of the Merger; and (iii) Interests of Orbotech Directors and Executive Officers in the Merger.

60. 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(a) of the 1934 Act and Rule 14a-9 Promulgated Thereunder Against the Individual Defendants and Orbotech

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

62. The Individual Defendants disseminated the false and misleading Registration Statement, which contained statements that, in violation of Section 14(a) of the 1934 Act and Rule 14a-9, in light of the circumstances under which they were made, omitted to state material facts necessary to make the statements therein not materially false or misleading. Orbotech is liable as the issuer of these statements.

63. The Registration Statement was prepared, reviewed, and/or disseminated by the Individual Defendants. By virtue of their positions within the Company, the Individual Defendants were aware of this information and their duty to disclose this information in the Registration Statement.

64. The Individual Defendants were at least negligent in filing the Registration Statement with these materially false and misleading statements.

65. The omissions and false and misleading statements in the Registration Statement are material in that a reasonable stockholder will consider them important in deciding how to vote on 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 in the Registration Statement and in other information reasonably available to stockholders.

66. The Registration Statement is an essential link in causing plaintiff and the Company's stockholders to approve the Proposed Transaction.

67. By reason of the foregoing, defendants violated Section 14(a) of the 1934 Act and Rule 14a-9 promulgated thereunder.

68. Because of the false and misleading statements in the Registration Statement, plaintiff and the Class are threatened with irreparable harm.

COUNT II

Claim for Violation of Section 20(a) of the 1934 Act Against the Individual Defendants and KLA

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

70. The Individual Defendants and KLA acted as controlling persons of Orbotech within the meaning of Section 20(a) of the 1934 Act as alleged herein. By virtue of their positions as officers and/or directors of Orbotech and participation in and/or awareness of the

Company's operations and/or intimate knowledge of the false statements contained in the Registration 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 contends are false and misleading.

71. Each of the Individual Defendants and KLA was provided with or had unlimited access to copies of the Registration 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.

72. 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 Registration Statement contains the unanimous recommendation of the Individual Defendants to approve the Proposed Transaction. They were thus directly involved in the making of the Registration Statement.

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

74. By virtue of the foregoing, the Individual Defendants and KLA violated Section 20(a) of the 1934 Act.

75. As set forth above, the Individual Defendants and KLA had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) of the 1934 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 1934

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

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment and relief 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;

C. Directing the Individual Defendants to disseminate a Registration 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(a) and/or 20(a) of the 1934 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 respectfully requests a trial by jury on all issues so triable.

Dated: June 4, 2018

RIGRODSKY & LONG, P.A.

By: /s/ Brian D. Long

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