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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ST. LOUIS POLICE RETIREMENT SYSTEM,  
On Behalf Of Itself and All Others Similarly  
Situating and Derivatively on Behalf of Nominal  
Defendant ABAXIS, INC.,

Plaintiff,

v.

CLINTON H. SEVERSON, ALBERTO R.  
SANTA INES, KENNETH P. ARON,  
VLADIMIR E. OSTOICH, DONALD P.  
WOOD, MARTIN V. MULROY, RICHARD J.  
BASTIANI, MICHAEL D. CASEY, HENK J.  
EVENHUIS, PRITHIPAL SINGH, VERNON  
E. ALTMAN, AND ERNEST S. TUCKER,

Defendants,

and

ABAXIS, INC.

Nominal Defendant.

**CASE NO. 12-CV-05086-YGR**

**FINAL ORDER AND JUDGMENT**

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**FINAL ORDER AND JUDGMENT**

This matter came before the Court for hearing pursuant to the Order of this Court, dated April 15, 2014 (“Order”), on the application of Plaintiff for approval of the proposed settlement (“Settlement”) set forth in the Stipulation of Settlement dated January 16, 2014, and attached hereto as Exhibit A (the “Stipulation”).

The Court has reviewed and considered all documents, evidence, objections (if any) and arguments presented in support of or against the Settlement; the Court being fully advised of the premises and good cause appearing therefore, the Court enters this Final Order and Judgment.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED this 12th day of August, 2014, that:

1. This Final Order and Judgment incorporates by reference the definitions in the Stipulation, and all capitalized terms used herein shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Action, including all matters necessary to effectuate the Settlement, and over all Parties.

3. The Court finds that, for the purposes of settlement only, the Action is a proper class action pursuant to Rules 23(a), 23(b)(1) and 23(b)(2) of the Federal Rules of Civil Procedure. Specifically, this Court finds that: (a) the members of the Class are so numerous that separate joinder of each member is impracticable; (b) there are questions of law or fact common to the Class, including whether the disclosures made by Abaxis in connection with the Plan Amendment were adequate, whether the Individual Defendants breached their fiduciary duties to members of the Class and whether Plaintiffs and the members of the Class were injured as a consequence of Defendants’ actions; (c) the claims or defenses of the Plaintiff are typical of the claims or defenses of the Class in that they all arise from the same allegedly wrongful course of conduct and are based on the same legal theories; (d) Plaintiff and its counsel have fairly and adequately protected the

1 interests of Abaxis and the Class; (e) the prosecution of separate actions by individual  
2 members of the Class would create a risk of either (i) inconsistent or varying  
3 adjudications with respect to individual members of the Class which would establish  
4 incompatible standards of conduct for Defendants, or (ii) adjudications with respect to  
5 individual members of the Class which would as a practical matter be dispositive of the  
6 interests of the other members of the Class who are not parties to the adjudications or  
7 substantially impair or impede their ability to protect their interests; and (f) there were  
8 allegations that Defendants acted or refused to act on grounds generally applicable to the  
9 Class, thereby making appropriate final injunctive relief or corresponding declaratory  
10 relief with respect to the Class as a whole. Thus, for the purposes of settlement only, the  
11 Action is a proper class action pursuant to Federal Rules of Civil Procedure 23(a),  
12 23(b)(1) and 23(b)(2).

13           4.       The Action is certified as a mandatory non-opt-out class action pursuant to  
14 Federal Rules of Civil Procedure 23(a), 23(b)(1) and 23(b)(2) on behalf of a class  
15 consisting of all persons and entities that held common stock in Abaxis as of the close of  
16 business on August 31, 2012, which represents the record date for the shareholders  
17 entitled to vote at Abaxis's October 24, 2012 Annual Meeting (excluding the Individual  
18 Defendants, members of the immediate family of any Individual Defendant, and any  
19 person, firm, trust, corporation, or other entity related to, or affiliated with, any Individual  
20 Defendant, and the legal representatives, heirs, successors or assigns of any such  
21 Excluded Person).

22           5.       Plaintiff St. Louis Police Retirement System is hereby certified as Class  
23 representative.

24           6.       The Court finds that the notice of the proposed Settlement disseminated to  
25 Abaxis shareholders satisfied the requirements of due process and all other applicable  
26 laws, and constitutes due and sufficient notice to all persons entitled thereto.  
27

1           7. All members of the Class are bound by this Final Order and Judgment, as  
2 full and adequate notice of the proceedings was given and a full opportunity to be heard  
3 was provided to members of the Class.

4           8. The Court finds that, during the course of the litigation of the Action, the  
5 Parties and their respective counsel at all times complied with the requirements of  
6 Federal Rule of Civil Procedure 11 and all other similar laws.

7           9. The Court finds that the terms of the Stipulation and Settlement are fair,  
8 reasonable and adequate as to the Class and each of the Parties, and hereby finally  
9 approves the Stipulation and Settlement in all respects, and orders the Parties to perform  
10 its terms to the extent the Parties have not already done so.

11           10. The Action and all claims contained therein, as well as all of the Released  
12 Claims, are hereby dismissed with prejudice. The Parties are to bear their own costs,  
13 except as otherwise provided in the Stipulation.

14           11. Upon the Effective Date, as defined in the Stipulation, Plaintiff (acting on  
15 its own behalf and derivatively on behalf of Abaxis), Abaxis, and each member of the  
16 Class (solely in his, her or its capacity as an Abaxis shareholder) shall be deemed to have,  
17 and by operation of this Final Order and Judgment shall have, fully, finally and forever  
18 released, relinquished and discharged the Released Claims against the Released Persons  
19 and any and all claims (including Unknown Claims) arising out of, relating to, or in  
20 connection with, the defense, settlement or resolution of the Action against the Released  
21 Persons.

22           12. Upon the Effective Date, as defined in the Stipulation, each of the  
23 Released Persons, Abaxis and each member of the Class (solely in his, her or its capacity  
24 as a Abaxis shareholder) shall be deemed to have, and by operation of this Final Order  
25 and Judgment shall have, fully, finally and forever released, relinquished and discharged  
26 each and all of the Plaintiff and Plaintiff's Counsel from all claims (including Unknown  
27

1 Claims) arising out of, relating to, or in connection with, the institution, prosecution,  
2 assertion, settlement or resolution of the Action or the Released Claims.

3 13. The Parties have expressly waived any and all provisions, rights and  
4 benefits conferred by any law of any jurisdiction or any state or territory of the United  
5 States, or principle of common law, which is similar, comparable or equivalent to  
6 California Civil Code § 1542, which provides:

7 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**  
8 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR**  
9 **HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH**  
10 **IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED**  
11 **HIS OR HER SETTLEMENT WITH THE DEBTOR.**

12 The Parties acknowledge, and members of the Class are hereby deemed to have  
13 acknowledged, that the waiver of Unknown Claims was separately bargained for and is a  
14 key element of the Settlement.

15 14. Abaxis, Plaintiff and each member of the Class (solely in his, her or its  
16 capacity as an Abaxis shareholder) are hereby forever barred and enjoined from  
17 instituting and/or prosecuting any other action against the Released Persons in any court  
18 or jurisdiction asserting any Released Claims.

19 15. Nothing herein shall in any way impair or restrict the rights of any Party to  
20 enforce the terms of the Stipulation.

21 16. Plaintiff's Counsel is hereby awarded **\$579,429.53** for attorneys' fees and  
22 reimbursement of expenses, subject to Plaintiff's Counsels' joint and several obligations  
23 to refund or repay within ten (10) business days any amounts paid if, for any reason,  
24 including as a result of any appeal and/or further proceedings on remand, or successful  
25 collateral attack, the amount awarded is lowered, overturned, or reduced.

26 17. This Final Order and Judgment shall not be deemed a presumption,  
27 concession, or admission by any Party of any fault, liability, or wrongdoing, or lack of  
28 merit as to any facts or claims alleged or asserted in the Action or in any other action or  
proceeding, and shall not be interpreted, construed, deemed, invoked, offered, or received

1 into evidence or otherwise used by any person in the Action or in any other action or  
2 proceeding, whether civil, criminal, or administrative, except in connection with any  
3 proceeding to enforce the terms of the Settlement. The Released Persons may file the  
4 Stipulation and/or this Final Order and Judgment in any action that may be brought  
5 against them in order to support a defense or counterclaim based on principles of *res*  
6 *judicata*, collateral estoppel, full faith and credit, release, good faith settlement, judgment  
7 bar or reduction or any other theory of claim preclusion or issue preclusion or similar  
8 defense or counterclaim; and any of the Parties may file the Stipulation and documents  
9 executed pursuant thereto and in furtherance thereof in any action to enforce the  
10 Settlement.

11 18. Without affecting the finality of this Final Order and Judgment in any  
12 way, this Court hereby retains continuing jurisdiction for a period of one (1) year from  
13 the date hereof with respect to implementation and enforcement of the terms of the  
14 Stipulation.

15 19. This Final Order and Judgment is a final, appealable judgment and should  
16 be entered forthwith by the Clerk in accordance with Federal Rule of Civil Procedure 58  
17 and all other similar laws.

18 IT IS SO ORDERED.

19  
20 DATED: August 12, 2014

21   
22 YVONNE GONZALEZ ROGERS  
23 UNITED STATES DISTRICT JUDGE  
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# EXHIBIT A

**KESSLER TOPAZ  
MELTZER & CHECK, LLP**

Eli R. Greenstein (217945)  
One Sansome Street, Suite 1850  
San Francisco, CA 94104  
Phone: (415) 400-3000  
Fax: (415) 400-3001  
egreenstein@ktmc.com

-and-

Eric L. Zagar (250519)  
James H. Miller  
Matthew A. Goldstein  
280 King of Prussia Road  
Radnor, PA 19087  
Phone: (610) 667-7706  
Fax: (267) 948-2512  
ezagar@ktmc.com  
jmillier@ktmc.com  
mgoldstein@ktmc.com

*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ST. LOUIS POLICE RETIREMENT SYSTEM,  
On Behalf Of Itself and All Others Similarly  
Situating and Derivatively on Behalf of Nominal  
Defendant ABAXIS, INC.,

Plaintiff,

v.

CLINTON H. SEVERSON, ALBERTO R.  
SANTA INES, KENNETH P. ARON,  
VLADIMIR E. OSTOICH, DONALD P.  
WOOD, MARTIN V. MULROY, RICHARD J.  
BASTIANI, MICHAEL D. CASEY, HENK J.  
EVENHUIS, PRITHIPAL SINGH, VERNON  
E. ALTMAN, AND ERNEST S. TUCKER,

Defendants,

and

ABAXIS, INC.

Nominal Defendant.

**CASE NO. 12-CV-05086-YGR**

**STIPULATION OF SETTLEMENT**



## STIPULATION OF SETTLEMENT

This Stipulation of Settlement (the “Stipulation” or the “Settlement”), is made and entered into by and among the following Parties (as defined further in ¶ 1.11 hereof), each by and through their respective counsel: (i) St. Louis Police Retirement System (“Plaintiff”) on behalf of itself and all others similarly situated, and derivatively on behalf of Abaxis, Inc. (“Abaxis” or the “Company”); (ii) defendants Clinton H. Severson (“Severson”), Alberto R. Santa Ines (“Santa Ines”), Kenneth P. Aron (“Aron”), Vladimir E. Ostoich (“Ostoich”), Donald P. Wood (“Wood”), Martin V. Mulroy (“Mulroy”), Richard J. Bastiani (“Bastiani”), Michael D. Casey (“Casey”), Henk J. Evenhuis (“Evenhuis”), Prithipal Singh (“Singh”), Vernon E. Altman (“Altman”) and Ernest S. Tucker (“Tucker”) (collectively, the “Individual Defendants”); and (iii) nominal defendant Abaxis (collectively with the Individual Defendants, “Defendants”). This Stipulation is intended by the Parties to fully, finally and forever resolve, discharge and settle the Released Claims (as defined in ¶ 1.17 hereof), upon and subject to the terms and conditions hereof. Capitalized terms not otherwise defined shall have the definitions set forth in ¶¶ 1.1-1.18 below.

### **I. INTRODUCTION AND BACKGROUND OF THE ACTION**

On October 1, 2012, Plaintiff filed in the Court a Verified Shareholder Class Action and Derivative Complaint (the “Complaint”) that asserted class claims on behalf of a class of all persons and entities that held common stock in Abaxis as of the close of business on August 31, 2012, which represents the record date for the shareholders entitled to vote at Abaxis’s October 24, 2012 Annual Meeting (excluding the Individual Defendants, members of the immediate family of any Individual Defendant, and any person, firm, trust, corporation, or other entity related to, or affiliated with, any Individual Defendant (“Excluded Persons”), and the legal representatives, heirs, successors or assigns of any such Excluded Person) (the “Class”). The Complaint also asserted derivative claims on behalf of nominal defendant Abaxis against the Individual Defendants alleging, *inter alia*, that: (1) the Grantor Defendants violated the terms of the Company’s 2005 Equity Incentive Plan (the “2005 Plan”) by purportedly granting to the Officer Defendants and other Abaxis employees more restricted stock units (“Restricted Stock Units” or “RSUs”) than could be settled pursuant to the 500,000 share limit contained in the 2005 Plan (the “Restricted

1 Stock Limit”); and (2) in total, the Abaxis board of directors (the “Board”) issued 870,179 shares of  
2 common stock upon settlement of Restricted Stock Units granted under the 2005 Plan since October  
3 2005 (370,179 shares in excess of the Restricted Stock Limit) and granted a total of 2,045,000  
4 Restricted Stock Units pursuant to the 2005 Plan (representing, if settled, 1,545,000 more shares  
5 than could be issued in accordance with the Restricted Stock Limit) (the “Excess RSUs”).

6 Also on October 1, 2012, Plaintiff filed a motion for preliminary injunction seeking to  
7 enjoin Abaxis’ annual meeting of shareholders scheduled for October 24, 2012 (the “2012 Annual  
8 Meeting”) because the Company’s September 27, 2012 Form DEF 14A proxy statement (the “2012  
9 Proxy”) allegedly contained materially false and misleading statements regarding a proposed  
10 amendment to the 2005 Plan (the “Plan Amendment”).

11 On October 23, 2012, the Court granted, in part, Plaintiff’s motion for preliminary  
12 injunction, enjoining the shareholder vote on the Plan Amendment until the Company made certain  
13 additional disclosures in the 2012 Proxy sought by Plaintiff. On October 24, 2012, the Company  
14 filed with the United States Securities and Exchange Commission (“SEC”) supplemental proxy  
15 materials containing the additional disclosures required by the Court. On November 8, 2012, the  
16 Company reconvened the 2012 Annual Meeting in order to allow shareholders to vote on the Plan  
17 Amendment, which was approved.

18 On December 28, 2012, Defendants filed motions to dismiss Plaintiff’s derivative claims  
19 contained in the Complaint (the “Motions to Dismiss”), in which Defendants argued that Plaintiff,  
20 *inter alia*, failed to adequately plead demand futility and failed to state a claim for relief.  
21 Defendants’ Motions to Dismiss have been fully briefed and oral argument was held on May 7,  
22 2013. At the request of the Parties, the Court agreed to defer ruling on the Motions to Dismiss  
23 pending the Parties’ efforts to reach a settlement of the Action.

24 Counsel for the Parties engaged in settlement negotiations in or about May 2013 and  
25 attended a mediation on September 20, 2013. Following the exchange of numerous proposals and  
26 counter proposals, and related negotiations, the Parties reached an agreement in principle to settle  
27 the Action on the terms set forth herein, which include changes to the Company’s corporate  
28 governance practices and policies. However, the Parties did not begin negotiating the amount of

1 attorneys' fees and expenses payable to Plaintiff's Counsel as a result of the benefits conferred due  
2 to the prosecution and settlement of the Action until after the substantive terms of the Settlement  
3 were negotiated and agreed to. On or about December 10, 2013, the Parties entered into a  
4 memorandum of understanding (the "MOU") memorializing their agreement in principle to settle  
5 the Action. Following additional negotiations among the Parties, the Parties have been unable to  
6 agree upon the amount of attorneys' fees and expenses payable to Plaintiff's Counsel.

7 **II. PLAINTIFF'S CLAIMS AND BENEFITS OF THE SETTLEMENT**

8 Plaintiff believes that the claims it has asserted in the Action have merit. Plaintiff, however,  
9 recognizes and acknowledges the expense and length of continued proceedings necessary to  
10 prosecute the Action against the Individual Defendants through trial and appeals. Plaintiff and its  
11 counsel have also taken into account the uncertain outcome and the risk of any litigation, especially  
12 in complex actions such as the Action, as well as the difficulties and delays inherent in such  
13 litigation. Plaintiff and its counsel are also mindful of the inherent problems of proof and possible  
14 defenses to the claims asserted in the Action. Based on their evaluation, Plaintiff and its counsel  
15 have determined that the Settlement set forth in this Stipulation is in the best interests of Abaxis and  
16 its shareholders. Plaintiff's Counsel believe that the Settlement set forth in the Stipulation confers  
17 substantial benefits upon Abaxis and its shareholders. Plaintiff's Counsel base this conclusion  
18 upon, *inter alia*, their extensive investigation during the development, prosecution and settlement of  
19 the Action, which included, *inter alia*: (i) inspecting, reviewing and analyzing the Company's  
20 filings with the SEC; (ii) researching corporate governance issues; and (iii) researching the  
21 applicable law with respect to the claims asserted in the Action and the potential defenses thereto.

22 **III. INDIVIDUAL DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

23 The Individual Defendants have denied, and continue to deny, that they have committed any  
24 breach of fiduciary duty, waste of assets, or any other violation of law or engaged in any of the  
25 wrongful acts alleged in the Action, or that they have been unjustly enriched by any of the acts  
26 alleged in the Action, and expressly maintain that they diligently and scrupulously complied with  
27 their fiduciary and other legal duties, to the extent such duties exist. Nonetheless, the Individual  
28 Defendants have also taken into account the uncertainty and risks inherent in any litigation,

1 especially in complex cases like the Action. Therefore, they have determined that it is desirable and  
2 beneficial that the Action be fully and finally settled in the manner and upon the terms and  
3 conditions set forth in this Stipulation. Abaxis believes that the Settlement set forth in this  
4 Stipulation confers benefits upon Abaxis and its shareholders and that the Settlement is in the best  
5 interests of Abaxis and its shareholders.

6 **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

7 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the  
8 Plaintiff (for itself and derivatively on behalf of Abaxis), the Individual Defendants and Abaxis, by  
9 and through their respective counsel or attorneys of record, as follows:

10 **1. Definitions**

11 As used in this Stipulation, the following terms have the meanings specified below:

12 1.1 “2010 Annual Meeting” means Abaxis’ annual meeting of shareholders held on  
13 October 27, 2010.

14 1.2 “2010 Proxy” means Abaxis’ proxy statement issued on or about September 15,  
15 2010 in connection with the 2010 Annual Meeting.

16 1.3 “Action” means the above-captioned action styled, Case No. 4:12-cv-05086-YGR;  
17 *St. Louis Police Retirement System, On Behalf of Itself and All Others Similarly Situated and*  
18 *Derivatively on Behalf of Nominal Defendant Abaxis, Inc. v. Clinton H. Severson, Alberto R. Santa*  
19 *Ines, Kenneth P. Aron, Vladimir E. Ostoich, Donald P. Wood, Martin V. Mulroy, Richard J.*  
20 *Bastiani, Michael D. Casey, Henk J. Evenhuis, Prithipal Singh, Vernon E. Altman, and Ernest S.*  
21 *Tucker, Defendants, and Abaxis, Inc., Nominal Defendant, pending in the United States District*  
22 *Court for the Northern District of California.*

23 1.4 “Court” means the United States District Court for the Northern District of  
24 California.

25 1.5 “Effective Date” means the first date by which all of the events and conditions  
26 specified in ¶ 7.1 of this Stipulation have been met and have occurred.

27 1.6 “Final Order and Judgment” or “Judgment” means the order and judgment to be  
28 rendered by the Court, substantially in the form attached hereto as Exhibit C.

1           1.7     “Final” means the time when a judgment that has not been reversed, vacated or  
2 modified in any way is no longer subject to appellate review, either because of disposition on  
3 appeal and conclusion of the appellate process or because of passage, without action, of time for  
4 seeking appellate review. More specifically, it is that situation when: (a) either no appeal has been  
5 filed and the time has passed for any notice of appeal to be timely filed in the Action; or (b) an  
6 appeal has been filed and the court of appeals has/have either affirmed the judgment or dismissed  
7 that appeal and the time for any reconsideration or further appellate review has passed; or (c) a  
8 higher court has granted further appellate review and that court has either affirmed the underlying  
9 judgment or affirmed the court of appeals’ decision affirming the judgment or dismissing the  
10 appeal.

11           1.8     “Grantor Defendants” means defendants Severson, Bastiani, Casey, Evenhuis, Singh  
12 Altman and Tucker.

13           1.9     “Notice” or “Notice of Proposed Settlement” means the notice of the Settlement to  
14 be provided by Abaxis, substantially in the form of the attached Exhibit B.

15           1.10    “Officer Defendants” means defendants Severson, Santa Ines, Aron, Ostoich, Wood  
16 and Mulroy.

17           1.11    “Parties” means, collectively, (i) Plaintiff; (ii) the Individual Defendants; and (iii)  
18 Abaxis.

19           1.12    “Person” means an individual, corporation, limited liability company, professional  
20 corporation, partnership, limited partnership, limited liability partnership, association, joint stock  
21 company, estate, legal representative, trust, unincorporated association, government or any political  
22 subdivision or agency thereof, and any business or legal entity, and each of their spouses, heirs,  
23 predecessors, successors, representatives, or assignees.

24           1.13    “Plaintiff’s Counsel” means Kessler Topaz Meltzer & Check, LLP and Saxena  
25 White, P.A.

26           1.14    “Preliminary Order” means the order to be rendered by the Court, substantially in the  
27 form of the attached Exhibit A.

1           1.15 “Related Persons” means each of a person’s spouses, heirs, executors, estates,  
2 marital communities, trustees, agents or administrators, present and former attorneys, legal  
3 representatives, assigns, past and present directors, officers, agents, advisors, employees, affiliates,  
4 predecessors, successors, parents, subsidiaries, divisions, affiliated entities, and any person or entity  
5 acting for or on behalf of any of them and each of them (including without limitation, any  
6 investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future  
7 officers, directors and employees of them).

8           1.16 “Released Persons” means Plaintiff and Defendants, and their respective Related  
9 Persons.

10           1.17 “Released Claims” means any claims, demands, rights, actions, causes of action,  
11 liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters, and issues  
12 known or unknown, including Unknown Claims, contingent or absolute, suspected or unsuspected,  
13 disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued,  
14 apparent or unapparent, whether state, federal, or foreign, common law, statutory, or regulatory,  
15 including, without limitation, claims under the federal securities laws, that have been or could have  
16 been asserted in any court, tribunal or proceeding: (a) by Plaintiff, or any Abaxis shareholder,  
17 derivatively on behalf of Abaxis, or by Abaxis, against any Released Person concerning the  
18 granting and/or receipt of the Excess RSUs, the 2005 Plan, the 2010 Proxy and/or any disclosures  
19 related to the 2010 Annual Meeting, the 2012 Proxy and/or any disclosures related to the 2012  
20 Annual Meeting; (b) by Plaintiff, individually and/or on behalf of the Class, or by any member of  
21 the Class, against Abaxis or any Released Person, concerning the granting and/or receipt of the  
22 Excess RSUs, the 2005 Plan, the 2010 Proxy and/or any disclosures related to the 2010 Annual  
23 Meeting, the 2012 Proxy and/or any disclosures related to the 2012 Annual Meeting; and (c) by  
24 Plaintiff, any Abaxis shareholder, the Individual Defendants or Abaxis, concerning the settlement of  
25 the Action; *provided, however*, that Released Claims do not include claims to enforce the  
26 Settlement, or claims regarding the value of Plaintiff’s securities other than those claims related to  
27 these subjects above.  
28

1           1.18   “Unknown Claims” means any of the Released Claims which Plaintiff, any Abaxis  
2 shareholder, the Individual Defendants or Abaxis do not know or suspect to exist in his, her or its  
3 favor at the time of the release of the Released Persons, including claims which, if known by him,  
4 her or it, might have affected his, her or its settlement with and release of the Released Persons, or  
5 might have affected his, her or its decision not to object to this Settlement. With respect to any and  
6 all Released Claims, the Parties stipulate and agree that, upon the Effective Date, Plaintiff, the  
7 Individual Defendants, and Abaxis shall expressly waive and each of the Abaxis shareholders shall  
8 be deemed to have, and by operation of the final order and judgment shall have, expressly waived  
9 any and all provisions, rights and benefits conferred by any law of any jurisdiction or any state or  
10 territory of the United States, or principle of common law, which is similar, comparable or  
11 equivalent to California Civil Code § 1542, which provides:

12           ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE***  
13           ***CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER***  
14           ***FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN***  
              ***BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER***  
              ***SETTLEMENT WITH THE DEBTOR.***

15           The Plaintiff, Individual Defendants, Abaxis and Abaxis shareholders may hereafter discover facts  
16 in addition to or different from those which he, she or it now knows or believes to be true with  
17 respect to the subject matter of the Released Claims, but, upon the effective date of the Settlement,  
18 the Plaintiff, Individual Defendants and Abaxis shall expressly settle and release, and each Abaxis  
19 shareholder shall be deemed to have, and by operation of the final order and judgment shall have,  
20 fully, finally, and forever settled and released, any and all Released Claims, known or unknown,  
21 suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which  
22 now exist, or heretofore have existed upon any theory of law or equity now existing or coming into  
23 existence in the future, including, but not limited to, conduct which is negligent, intentional, with or  
24 without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or  
25 existence of such different or additional facts. The Parties acknowledge, and Abaxis shareholders  
26 shall be deemed by operation of the Final Order and Judgment to have acknowledged, that the  
27 foregoing waiver was separately bargained for and is a key element of the Settlement of which this  
28 release is a part.

1           **2.       Terms of the Settlement**

2           The Parties agree that, as a result of the filing, pendency, prosecution and settlement of the  
3 Action, Abaxis and/or the Board shall take all necessary steps to adopt the corporate governance  
4 measures outlined below in consideration of the Settlement and maintain such measures for five  
5 years from the date of adoption. The Parties agree the measures set forth below constitute a benefit  
6 to Abaxis and its shareholders.

- 7           A.     The Compensation Committee Charter shall be revised to require the  
8                Compensation Committee on an annual basis to review, with the assistance  
9                of outside counsel, Abaxis' equity incentive plans;
- 10          B.     Prior to the granting of any equity incentive award(s) to executive officers,  
11                the Board and/or Compensation Committee shall review, with the assistance  
12                of outside counsel, Abaxis' equity incentive plans to ensure compliance  
13                therewith;
- 14          C.     Equity awards to executive officers shall be approved at a meeting of the  
15                Compensation Committee or Board, as applicable, and not by unanimous  
16                written consent;
- 17          D.     Abaxis directors shall be required to receive annual education on relevant  
18                topics, e.g., administration of the Company's compensation plans, disclosure  
19                obligations to shareholders and the Company's NASDAQ listing  
20                requirements;
- 21          E.     The Company's annual proxy statement shall contain a certification from the  
22                Compensation Committee and/or the Board, as applicable, that they have  
23                reviewed the terms of the Company's equity incentive plans and that all  
24                equity awards granted during the prior fiscal year were granted in compliance  
25                with the terms of the Company's equity incentive plans;
- 26          F.     The Board or Compensation Committee shall retain an independent  
27                compensation consultant each year;
- 28



1 G. The Compensation Committee Charter shall be revised to require the  
2 Compensation Committee to consist of at least three (3) members;

3 H. The Company's stock plan administrator shall:

4 1. Become a member of the National Association of Stock Plan  
5 Professionals; and

6 2. Attend a minimum of eight (8) hours of training sponsored by the  
7 National Association of Stock Plan Professionals per fiscal year for  
8 the next five (5) fiscal years;

9 I. The Company, with the assistance of outside counsel, will conduct an annual  
10 training session for the Company's stock plan administrator regarding equity  
11 incentive plan administration procedures;

12 J. The Company will adopt a compensation clawback policy that includes the  
13 following provisions, among other things:

14 1. If the Company is required to prepare an accounting restatement for  
15 any fiscal quarter or year due to the material noncompliance of the  
16 Company with any financial reporting requirement, and the Board  
17 determines that an officer's misconduct contributed to the  
18 noncompliance that resulted in the obligation to restate the  
19 Company's financial statements, the Board may require (i) in the case  
20 of the Company's Chief Executive Officer and Chief Financial  
21 Officer, that each such individual repay to the Company the  
22 compensation listed in paragraphs (a), (b), and (c) below, regardless  
23 of which officer's misconduct contributed to the noncompliance that  
24 resulted in the obligation to restate the Company's financial  
25 statements, and (ii) in the case of any other officer whose misconduct  
26 contributed to the noncompliance which resulted in the obligation to  
27 restate the Company's financial statements, that each such individual  
28

1                    repay to the Company the compensation listed in (a), (b) and (c)  
2                    below, in each case as and to the extent permitted by applicable law:

3                    a.        Up to the full amount of the difference between any bonus  
4                    compensation received by the officer that was calculated  
5                    based on the financial statements that were subsequently  
6                    restated and the lower bonus compensation to which the  
7                    officer would have been entitled had the financial statements  
8                    been properly reported;

9                    b.        Up to the full amount of any equity incentive grant received  
10                    by the officer that was determined based on the financial  
11                    statements that were subsequently restated; and

12                    c.        If, after the release of earnings for any period with respect to  
13                    which financial statements were subsequently restated and  
14                    prior to the announcement of such restatement, the officer sold  
15                    any shares of Company common stock acquired pursuant to an  
16                    option or other award granted after the adoption of this policy  
17                    under the Company's equity incentive plans, the excess of (i)  
18                    the actual aggregate sales proceeds from the officer's sale of  
19                    those shares, over (ii) the aggregate sales proceeds the officer  
20                    would have received from the sale of those shares at a price  
21                    per share determined appropriate by the Board in its discretion  
22                    to reflect what the Company's common stock price would  
23                    have been if the restatement had occurred prior to such sales;  
24                    provided, however, that the aggregate sales proceeds  
25                    determined by the Board under this clause (1) with respect to  
26                    shares acquired upon exercise of an option shall not be less  
27                    than the aggregate exercise price paid for those shares; and  
28

1           2.       The Board may seek recoupment from the officer(s) for the amounts  
2                   described above from any of the following sources: prior incentive  
3                   compensation payments; future payments of incentive compensation;  
4                   cancellation of outstanding equity awards; future equity awards; and  
5                   direct repayment. To the extent permitted by applicable law, the  
6                   Company may offset such amount against any compensation or other  
7                   amounts owed by the Company to the officer. If an amount repaid to  
8                   the Company under the Policy will not be fully deductible by the  
9                   officer, the Board may, in its discretion, reduce the amount to be  
10                  repaid by the amount determined by the Board to reasonably take into  
11                  account the adverse tax consequences of such repayment to the  
12                  officer.

13           **3.       Settlement Class**

14           3.1       The Parties agree, for settlement purposes only, to the certification of the Action as a  
15           mandatory non-opt-out class action, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1)  
16           and 23(b)(2), on behalf of the Class, as defined above. In the event the Settlement does not become  
17           final for any reason, the certification of the Class shall be deemed vacated, and the Action shall  
18           proceed as though the Class had never been certified.

19           **4.       Procedure for Implementing the Settlement**

20           4.1       After execution of the Stipulation, Plaintiff and Defendants shall submit the  
21           Stipulation together with its exhibits to the Court and shall apply for entry of an order substantially  
22           in the form of Exhibit A hereto, requesting, *inter alia*, the preliminary approval of the Settlement set  
23           forth in the Stipulation and approval of the Notice, substantially in the form of Exhibit B hereto,  
24           which shall include the general terms of the Settlement set forth in this Stipulation, including, but  
25           not limited to, the maximum amount of attorneys' fees and expenses that Plaintiff's Counsel will  
26           seek in an application to the Court and the date of the Settlement Hearing, as defined in ¶ 4.2 below.  
27           Notice of the Proposed Settlement shall be provided by Abaxis at its expense by causing the Notice  
28           to be filed with the SEC on Form 8-K, in accordance with the Preliminary Order, or as otherwise

1 ordered by the Court. Abaxis will also be responsible for any and all costs associated with the  
2 dissemination of any additional notice ordered by the Court. Counsel for Abaxis shall, at least  
3 twenty one (21) business days before the Settlement Hearing (as defined below), file with the Court  
4 an appropriate affidavit with respect to the preparation and dissemination of the Notice.

5 4.2 Plaintiff will request that after the Notice is given, the Court hold a hearing (the  
6 “Settlement Hearing”) to consider and determine whether to approve the terms of the Settlement as  
7 fair, reasonable and adequate and to consider Plaintiff’s Counsel’s application to the Court for an  
8 award of attorneys’ fees and reimbursement of expenses.

9 **5. Releases**

10 5.1 Upon the Effective Date, Plaintiff, Abaxis, and each member of the Class (solely in  
11 his, her or its capacity as an Abaxis shareholder) shall be deemed to have, and by operation of the  
12 Final Order and Judgment shall have, fully, finally, and forever released, relinquished and  
13 discharged the Released Claims against the Released Persons and any and all claims (including  
14 Unknown Claims) arising out of, relating to, or in connection with, the defense, settlement or  
15 resolution of the Action against the Released Persons.

16 5.2 Upon the Effective Date each of the Released Persons and each Abaxis shareholder  
17 shall be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally,  
18 and forever released, relinquished and discharged Plaintiff and Plaintiff’s Counsel from all claims  
19 (including Unknown Claims) arising out of, relating to, or in connection with, the institution,  
20 prosecution, assertion, settlement or resolution of the Action or the Released Claims.

21 5.3 Nothing herein shall in any way impair or restrict the rights of any Party to enforce  
22 the terms of the Stipulation.

23 **6. Plaintiff’s Counsel’s Attorneys’ Fees and Expenses**

24 6.1 Plaintiff contends that its counsel is entitled to an award of attorneys’ fees and  
25 expenses for their role in the prosecution and settlement of the Action, and the Parties have  
26 attempted to negotiate an amount of fees and expenses to be paid to Plaintiff’s Counsel. As of the  
27 date of this Stipulation, the Parties have not reached agreement on an award of attorneys’ fees and  
28 expenses. Plaintiff’s Counsel intends to apply to the Court for an award of attorneys’ fees and

1 expenses of no more than \$2,000,000 in the aggregate, and the Parties intend to, and do, preserve all  
2 arguments in connection with any petition for attorneys' fees and expenses by Plaintiff's Counsel.  
3 Defendants may oppose the amount of any application for fees and expenses made by Plaintiff's  
4 Counsel. Abaxis and/or its insurance carrier shall pay such fees and expenses as may be awarded  
5 by the Court (the "Fee Award"). Any failure of the Court to approve the Settlement shall have no  
6 impact on or preclude Plaintiff's Counsel from applying for an award of attorneys' fees and  
7 expenses on grounds of mootness, and Defendants reserve the right to oppose any such application.  
8 However, any failure by the Parties to reach agreement on an amount of fees and expenses, or by  
9 the Court to approve the amount of such fees, shall not affect the validity of the Settlement.

10           6.2     The payment of the Fee Award shall be made by Abaxis and/or its insurance carrier  
11 within ten (10) calendar days after entry of the Final Order and Judgment. The Fee Award shall be  
12 paid by check or wire transfer to an account designated by Kessler Topaz Meltzer & Check, LLP,  
13 and such payment shall fully discharge any and all obligations of the Defendants with respect to  
14 attorneys' fees and expenses of Plaintiff. Any such payment shall be made subject to Plaintiff's  
15 Counsel's obligation to make refunds or repayment to the Company if any specified condition to the  
16 Settlement is not satisfied. Any order or proceeding relating to the Fee Award, or any appeal from  
17 any order relating thereto or reversal or modification thereof, shall not operate to terminate or  
18 cancel this Stipulation, or affect or delay the finality of the Order and Final Judgment approving the  
19 Stipulation and the Settlement as set forth herein.

20           **7.       Conditions of Settlement, Effect of Disapproval, Cancellation or Termination**

21           7.1     The Effective Date of this Stipulation shall be conditioned on the occurrence of all of  
22 the following events:

- 23                   (a)     The conditional certification of the Action as a non-opt-out class action  
24 pursuant to Fed. R. Civ. P. 23 on behalf of a Class as defined herein;
- 25                   (b)     the entry by the Court of the Final Order and Judgment, substantially in the  
26 form of Exhibit C hereto; and
- 27                   (c)     the Final Order and Judgment has become Final.
- 28

1           7.2     If any of the conditions specified in ¶ 7.1 are not met, then this Stipulation shall be  
2 canceled and terminated unless the Parties mutually agree in writing, by and through their  
3 respective counsel, to proceed with the Stipulation.

4           7.3     In the event that the Stipulation or Settlement is not approved by the Court, or the  
5 Settlement is terminated for any reason, the Parties shall be restored to their respective positions in  
6 the Action as of December 10, 2013, the last date before the execution of the MOU, and all  
7 negotiations, proceedings, documents prepared and statements made in connection herewith shall be  
8 without prejudice to the Parties, shall not be deemed or construed to be an admission by any Party  
9 of any act, matter, or proposition and shall not be used in any manner for any purpose in any  
10 subsequent proceeding in the Action or in any other action or proceeding. In such event, the terms  
11 and provisions of the Stipulation, with the exception of ¶¶ 1.1-1.18, 7.2, 8.6, 8.8, 8.9, 8.10, 8.11 and  
12 8.13 herein, shall have no further force and effect with respect to the Parties and shall not be used in  
13 the Action or in any other proceeding for any purpose, and any judgment or orders entered by the  
14 Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*.

15           **8.     Miscellaneous Provisions**

16           8.1     The Parties (a) acknowledge that it is their intent to consummate this Stipulation; and  
17 (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and  
18 conditions of this Stipulation and to exercise their best efforts to accomplish the foregoing terms  
19 and conditions of this Stipulation. The Parties and their counsel agree that they will refrain from  
20 disparaging each other in any publicly disseminated statements in connection with the Action.

21           8.2     The Parties intend this Settlement to be a final and complete resolution of all  
22 disputes between Plaintiff, Abaxis, and the Individual Defendants with respect to the Action. The  
23 Settlement compromises claims which are contested and shall not be deemed an admission by any  
24 Party as to the merits of any claim, allegation or defense. The Parties further agree that the claims  
25 are being settled voluntarily after consultation with competent legal counsel. The Final Order and  
26 Judgment shall contain a finding that during the course of the litigation, the Parties and their  
27 respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure  
28 11 and all other similar laws.

1           8.3     Pending final determination of whether the Settlement should be approved, all  
2 proceedings and all further activity between the Parties regarding or directed toward the Action,  
3 except for those activities and proceedings relating to this Stipulation and the Settlement, shall be  
4 stayed.

5           8.4     Pending the Effective Date of this Stipulation or the termination of the Stipulation  
6 according to its terms, Plaintiff and all Abaxis shareholders, and their respective Related Persons,  
7 shall be barred and enjoined from commencing, prosecuting, instigating, or in any way participating  
8 in the commencement or prosecution of any action asserting any Released Claims against any  
9 Released Person.

10          8.5     The provisions contained in this Stipulation (including any exhibits attached hereto)  
11 shall not be deemed a presumption, concession, or admission by any Party of any fault, liability, or  
12 wrongdoing, or lack of merit as to any facts or claims alleged or asserted in the Action or in any  
13 other action or proceeding, and shall not be interpreted, construed, deemed, invoked, offered, or  
14 received into evidence or otherwise used by any person in the Action or in any other action or  
15 proceeding, whether civil, criminal, or administrative, except in connection with any proceeding to  
16 enforce the terms of the Settlement. The Released Persons may file the Stipulation and/or the Final  
17 Order and Judgment in any action that may be brought against them in order to support a defense or  
18 counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release,  
19 good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue  
20 preclusion or similar defense or counterclaim.

21          8.6     The exhibits to this Stipulation are material and integral parts hereof and are fully  
22 incorporated herein by this reference.

23          8.7     The Stipulation may be amended or modified only by a written instrument signed by  
24 or on behalf of all Parties or their respective successors-in-interest.

25          8.8     This Stipulation and the exhibits attached hereto constitute the entire agreement  
26 among the Parties and no representations, warranties or inducements have been made to any Party  
27 concerning the Stipulation or any of its exhibits other than the representations, warranties and  
28

1 covenants contained and memorialized in such documents. Except as otherwise provided herein,  
2 each Party shall bear its own costs.

3 8.9 Each Party severally acknowledges that no promise, inducement or agreement not  
4 expressed herein has been made to it or him, that this Stipulation contains the entire agreement  
5 between or among the Parties concerning the matters described in this Stipulation, and, except as  
6 expressly provided herein, that there are no third-party beneficiaries to this Stipulation.

7 8.10 This Stipulation shall be binding upon and shall inure to the benefit of the Parties  
8 and their respective agents, successors, executors, heirs, and assigns.

9 8.11 This Stipulation and the Settlement contemplated by it shall be governed by and  
10 construed in accordance with the laws of the State of California without regard to conflict of laws  
11 principles. Any action arising out of or relating to this Stipulation shall be brought exclusively in  
12 the Court, or if the Court shall lack subject-matter jurisdiction over the action, then in such state  
13 court of the State of California as may have subject-matter jurisdiction over such action.

14 8.12 If any provision or provisions of this Stipulation shall be held to be invalid, illegal,  
15 unenforceable or in conflict with the law of the State of California, the validity, legality and  
16 enforceability of the remaining provisions of the Stipulation shall not in any way be affected or  
17 impaired thereby.

18 8.13 Each counsel or other Person executing this Stipulation or its exhibits on behalf of  
19 any Party hereby warrants that such Person has the full authority to do so.

20 8.14 This Stipulation may be executed in one or more counterparts. A faxed or pdf  
21 signature shall be deemed an original signature for the purposes of this Stipulation. All executed  
22 counterparts, and each of them, shall be deemed to be one and the same instrument. A complete set  
23 of counterparts, either originally executed or copies thereof, shall be filed with the Court.

24 8.15 This Stipulation shall be binding upon, and inure to the benefit of, the successors and  
25 assigns of the Parties and the Released Persons.

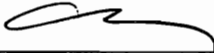
26 8.16 The Court shall retain jurisdiction with respect to implementation and enforcement  
27 of the terms of the Stipulation, and the Parties submit to the jurisdiction of the Court for purposes of  
28 implementing and enforcing the Settlement embodied in the Stipulation.



1 8.17 This Stipulation and the exhibits attached hereto shall be considered to have been  
2 negotiated, executed and delivered, and to be wholly performed, in the State of California, and the  
3 rights and obligations of the Parties to this Stipulation shall be construed and enforced in  
4 accordance with, and governed by, the internal, substantive laws of the State of California without  
5 giving effect to that State's choice-of-law principles.

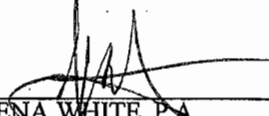
6 8.18 Without further order of the Court, the Parties may agree to reasonable extensions of  
7 time to carry out any of the provisions of this Stipulation.

8 DATED: Jan. 16, 2014

9   
10 KESSLER TOPAZ MELTZER  
11 & CHECK, LLP  
12 Eric L. Zagar  
13 James H. Miller  
14 Matthew A. Goldstein  
15 280 King of Prussia Road  
16 Radnor, Pennsylvania 19087

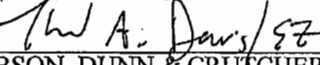
17 *Counsel for Plaintiff*

14 DATED: January 16, 2014

15   
16 SAXENA WHITE, P.A.  
17 Joseph E. White, III  
18 Jonathan M. Stein  
19 Lester R. Hooker  
20 2424 N. Federal Highway, Suite 257  
21 Boca Raton, FL 33431

22 *Counsel for Plaintiff*

19 DATED: Jan 16, 2014

20   
21 GIBSON, DUNN & CRUTCHER LLP  
22 Thad A. Davis  
23 555 Mission Street, Suite 3000  
24 San Francisco, CA 94105

25 *Counsel for Defendants Clinton H. Severson,*  
26 *Alberto R. Santa Ines; Kenneth P. Aron,*  
27 *Vladimir E. Ostoich, Donald P. Wood, Martin*  
28 *V. Mulroy, Richard J. Bastiani, Michael D.*  
*Casey, Henk J. Evenhuis, Prithipal Singh,*  
*Vernon E. Altman, Ernest S. Tucker, and*  
*Abaxis, Inc.*