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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

**NOTICE OF MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT AND
MEMORANDUM OF LAW IN SUPPORT
THEREOF**

NOTICE OF MOTION; RELIEF REQUESTED

PLEASE TAKE NOTICE that on January 24, 2014, at 9:01 a.m., or at such other date and time as ordered by the Court, in the United States District Court for the Northern District of California, Ronald V. Dellums Federal Building and United States Courthouse, 1301 Clay Street, Oakland, California 94612, Plaintiff St. Louis Police Retirement System will and hereby does move this Court to preliminarily approve the proposed settlement of the above-captioned action.

This motion for preliminary approval of the proposed settlement is based on this Notice of Motion; the Memorandum of Points and Authorities, *infra*; the Declaration of Eric L. Zagar submitted in support thereof; the pleadings, records, and papers on file in this action, and such other papers as may be filed at or before the hearing on this motion; and oral argument of counsel and any other matters that properly may be brought before the Court.

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1 **I. INTRODUCTION**

2 Plaintiff St. Louis Police Retirement System (“Plaintiff”) submits this memorandum in
3 support of its motion for preliminary approval of the proposed settlement (the “Settlement”) of the
4 claims brought on behalf of stockholders of Abaxis, Inc. (“Abaxis” or the “Company”) against the
5 Individual Defendants.¹ The terms of the Settlement are set forth in the Stipulation of Settlement
6 (the “Stipulation”), submitted herewith.²

7 The Settlement is the result of extensive arm’s-length negotiations between the Parties. As
8 a result of the pendency, prosecution, and settlement of the litigation, Abaxis has, in addition to
9 making additional disclosures in connection with its 2012 Annual Meeting pursuant to the
10 preliminary injunction issued by the Court on October 23, 2012, adopted (or will adopt) significant
11 corporate governance measures that: (i) directly address Plaintiff’s allegations of improper equity
12 compensation practices, (ii) are designed to preclude the recurrence of the wrongdoing alleged in
13 the Action, and (iii) provide for additional reforms to Abaxis’ executive compensation practices
14 through, among other things, the adoption of a comprehensive compensation “clawback” policy.

15 The Settlement confers a substantial benefit upon Abaxis and its shareholders. In
16 determining whether preliminary approval is warranted, the issue before the Court is whether the
17 proposed Settlement is within a range of what might be found to be fair, reasonable, and adequate,
18 such that notice of the proposed Settlement should be provided to Abaxis shareholders and a
19 hearing be scheduled for final settlement approval. There is no question that the Settlement is a
20 very favorable resolution of a case of considerable complexity and is eminently fair, reasonable,
21 and adequate. Accordingly, Plaintiff respectfully requests that the Court enter the [Proposed]
22 Order Preliminarily Approving Settlement and Providing for Notice, submitted herewith, which:
23 (a) grants preliminary approval of the Settlement, (b) preliminarily certifies a Class of Abaxis

24 _____
25 ¹ The Individual Defendants are Clinton H. Severson, Alberto R. Santa Ines, Kenneth P. Aron,
26 Vladimir E. Ostoich, Donald P. Wood, Martin V. Mulroy, Richard J. Bastiani, Michael D. Casey,
27 Henk J. Evenhuis, Prithipal Singh, Vernon E. Altman and Ernest S. Tucker. Together, Plaintiff,
28 the Individual Defendants and Abaxis may be referred to herein as the “Parties”.

² A true and correct copy of the Stipulation is attached to the Declaration of Eric L. Zagar,
submitted herewith, (the “Zagar Decl.”) as Exhibit 1. Unless otherwise defined, all capitalized
terms used herein shall have the same meaning as in the Stipulation.

1 stockholders for purposes of the Settlement, (c) directs that notice be given to Abaxis shareholders,
2 and (d) schedules a hearing at which the Court will consider final approval of the Settlement.

3 **II. FACTUAL AND PROCEDURAL HISTORY**

4 On October 1, 2012, Plaintiff filed in the Court a Verified Shareholder Class Action and
5 Derivative Complaint (the "Complaint") that asserted class claims on behalf of a class of all
6 persons and entities that held common stock in Abaxis as of the close of business on August 31,
7 2012, which represents the record date for the stockholders entitled to vote at Abaxis's October 24,
8 2012 Annual Meeting (excluding the Excluded Persons and the legal representatives, heirs,
9 successors or assigns of any such Excluded Person) (the "Class"), *see* Stipulation at p. 1:16-23, as
10 well as derivative claims on behalf of nominal defendant Abaxis, against the Individual
11 Defendants. The Complaint alleged, *inter alia*, that: (1) the Grantor Defendants violated the terms
12 of the Company's 2005 Plan by granting to the Officer Defendants and other Abaxis employees
13 Restricted Stock Units than could be settled pursuant to the 500,000 share Restricted Stock Limit;
14 and (2) in total, the Board issued 870,179 shares of common stock upon settlement of Restricted
15 Stock Units granted under the 2005 Plan since October 2005 (370,179 shares in excess of the
16 Restricted Stock Limit) and granted a total of 2,045,000 Restricted Stock Units pursuant to the
17 2005 Plan (1,545,000 more than could be settled in accordance with the Restricted Stock Limit).
18 *See* Stipulation at pp. 1:23-2:5. Also on October 1, 2012, Plaintiff filed a motion for preliminary
19 injunction seeking to enjoin Abaxis' October 24, 2012 annual meeting because the Company's
20 2012 Proxy contained materially false and misleading statements regarding the proposed Plan
21 Amendment. *See* Stipulation at p. 2:6-10.

22 On October 23, 2012, the Court granted, in part, Plaintiff's motion for preliminary
23 injunction, enjoining the shareholder vote on the Plan Amendment until the Company made certain
24 additional disclosures in the 2012 Proxy sought by Plaintiff. *See* Stipulation at p. 2:11-13. On
25 October 24, 2012, the Company filed with the SEC supplemental proxy materials containing the
26 additional disclosures required by the Court. *See* Stipulation at p. 2:13-15. Thereafter, on
27 November 8, 2012, the Company reconvened the 2012 Annual Meeting in order to allow
28

1 stockholders to vote on the Plan Amendment, which was subsequently approved. *See* Stipulation
2 at p. 2:15-17.

3 On December 28, 2012, Defendants filed motions to dismiss Plaintiff's Complaint, arguing
4 that Plaintiff, *inter alia*, failed to adequately plead demand futility and failed to state a claim for
5 relief. *See* Stipulation at p. 2:18-20. Defendants' Motions to Dismiss were fully briefed and oral
6 argument was held on May 7, 2013. At the request of the Parties, the Court agreed to defer ruling
7 on the Motions to Dismiss pending the Parties' efforts to reach a settlement of the Action. *See*
8 Stipulation at p. 2:21-23.

9 Counsel for the Parties engaged in settlement negotiations in or about May 2013 and,
10 following the exchange of numerous proposals and counter-proposals and related negotiations over
11 the course of several months, the Parties eventually reached an agreement in principle to settle the
12 Action on the terms set forth in the Stipulation, which include changes to the Company's corporate
13 governance practices and policies. *See* Stipulation at p. 2:24-28. After the substantive terms of the
14 Settlement were negotiated, the Parties then began negotiating the amount of fees and expenses
15 payable to Plaintiff's Counsel for the benefits conferred as a result of the prosecution and
16 settlement of the Action. *See* Stipulation at pp. 2:28-3:3. On or about December 10, 2013, the
17 Parties entered into a memorandum of understanding (the "MOU") memorializing their agreement
18 in principle to settle the Action. *See* Stipulation at p. 3:3-5. Following additional negotiations
19 among the Parties, the Parties have been unable to agree upon the amount of fees and expenses
20 payable to Plaintiff's Counsel. *See* Stipulation at pp. 3:5-6, 12:26-28. Accordingly, Plaintiff's
21 Counsel intend to apply to the Court for an award of attorneys' fees and expenses. *See* Stipulation
22 pp. 12:28-13:2. The Parties entered into the Stipulation on January 16, 2014.

23 **III. THE TERMS OF THE SETTLEMENT**

24 The Parties agree that, as a result of the filing, pendency, prosecution and settlement of the
25 Action, Abaxis and/or the Company's Board shall take all necessary steps to adopt the corporate
26 governance measures outlined below in consideration of the Settlement and maintain such
27

1 measures for five years from the date of adoption, and that the measures set forth below constitute
2 a benefit to Abaxis and its stockholders:

- 3 1. The Compensation Committee Charter shall be revised to require the Compensation
4 Committee on an annual basis to review, with the assistance of outside counsel,
Abaxis' equity incentive plans;
- 5 2. Prior to the granting of any equity incentive award(s) to executive officers, the
6 Board and/or Compensation Committee shall review, with the assistance of outside
7 counsel, Abaxis' equity incentive plans to ensure compliance therewith;
- 8 3. Equity awards to executive officers shall be approved at a meeting of the
9 Compensation Committee or Board, as applicable, and not by unanimous written
10 consent;
- 11 4. Abaxis directors shall be required to receive annual education on relevant topics,
12 e.g., administration of the Company's compensation plans, disclosure obligations to
13 stockholders and the Company's NASDAQ listing requirements;
- 14 5. The Company's annual proxy statement shall contain a certification from the
15 Compensation Committee and/or the Board, as applicable, that they have reviewed
16 the terms of the Company's equity incentive plans and that all equity awards
17 granted during the prior fiscal year were granted in compliance with the terms of the
18 Company's equity incentive plans;
- 19 6. The Board or Compensation Committee shall retain an independent compensation
20 consultant each year;
- 21 7. The Compensation Committee Charter shall be revised to require the Compensation
22 Committee to consist of at least three (3) members;
- 23 8. The Company's stock plan administrator shall:
 - 24 a. Become a member of the National Association of Stock Plan Professionals;
25 and
 - 26 b. Attend a minimum of eight (8) hours of training sponsored by the National
27 Association of Stock Plan Professionals per fiscal year for the next five (5)
28 fiscal years;
9. The Company, with the assistance of outside counsel, will conduct an annual
training session for the Company's stock plan administrator regarding equity
incentive plan administration procedures;
10. The Company will adopt a compensation clawback policy that includes the
following provisions, among other things:
 - a. If the Company is required to prepare an accounting restatement for any
fiscal quarter or year due to the material noncompliance of the Company
with any financial reporting requirement, and the Board determines that
misconduct contributed to the noncompliance that resulted in the obligation
to restate the Company's financial statements, the Board may require (i) in
the case of the Company's Chief Executive Officer and Chief Financial

1 Officer, that each such individual repay to the Company the compensation
2 listed in paragraphs (i), (ii), and (iii) below, regardless of which officer's
3 misconduct contributed to the noncompliance that resulted in the obligation
4 to restate the Company's financial statements, and (ii) in the case of any
5 other officer whose misconduct contributed to the noncompliance which
6 resulted in the obligation to restate the Company's financial statements, that
7 each such individual repay to the Company the compensation listed in (i),
8 (ii) and (iii) below, in each case as and to the extent permitted by applicable
9 law:

10 i. Up to the full amount of the difference between any bonus
11 compensation received by the officer that was calculated based on
12 the financial statements that were subsequently restated and the
13 lower bonus compensation to which the officer would have been
14 entitled had the financial statements been properly reported;

15 ii. Up to the full amount of any equity incentive grant received by the
16 officer that was determined based on the financial statements that
17 were subsequently restated; and

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

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

IV. LEGAL STANDARD

“District court review of a class action settlement proposal is a two-step process: preliminary approval and a subsequent final approval after a ‘fairness hearing.’” 2 McLaughlin on Class Actions § 6:7 (9th ed. 2012). The first step requires two findings: (1) preliminary certification of the settlement class (*see id.*); and (2) “a preliminary determination on the fairness, reasonableness and adequacy of the settlement terms.” *Id.* “For purposes of preliminary approval of class certification and proposed settlement, a district court must evaluate the terms of the settlement to determine whether they are within a range of possible judicial approval.” *Wright v. Linkus Enterprises, Inc.*, 259 F.R.D. 468, 472 (E.D. Cal. 2009) (citing Newburg on Class Actions (4th ed. 2002) §11:25). Similarly, the settlement of a stockholder derivative action should be preliminarily approved where the settlement is “within the range of possible approval[.]” *In re NVIDIA Corp. Deriv. Litig.*, No. 06-6110-SBA-JCS, 2008 WL 5382544, at *2 (N.D. Cal. Dec. 22, 2008) (citing *Manual for Complex Litigation* § 30.41, at 237 (3d ed. 1995)). Here, the proposed Class meets the criteria set forth in Fed. R. Civ. P. 23 and the proposed Settlement is within the range of possible judicial approval. Accordingly, the Settlement should be preliminarily approved.

A. Class Certification for Settlement Purposes is Proper

As provided in the Stipulation, the Parties agree that the Action should be certified as a class action for settlement purposes pursuant to Fed. R. Civ. P. 23(a), 23(b)(1) and 23(b)(2). The Parties further agree that the settlement Class is to consist 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 stockholders entitled to vote at Abaxis’s October 24, 2012 Annual Meeting (excluding the Excluded Persons and the legal representatives, heirs, successors or assigns of any such Excluded Person).

Rule 23(a) provides four prerequisites that must be satisfied for class certification: (1) the class must be so numerous that joinder of all members is impracticable, (2) questions of law or fact exist that are common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and

1 adequately protect the interests of the class. *Wright*, 259 F.R.D. at 471. In addition, Rule 23(b)
2 “requires a plaintiff to establish one of the following: (1) that there is a risk of substantial prejudice
3 from separate actions; (2) that declaratory or injunctive relief benefitting the class as a whole
4 would be appropriate; or (3) that common questions of law or fact predominate and the class action
5 is superior to other available methods of adjudication.” *Id.* at 471-72. Here, the elements of Rule
6 23(a) and (b) are readily satisfied.

7 **1. Numerosity**

8 “The numerosity requirement of Rule 23(a)(1) is established if the class is so numerous that
9 joinder of all members is impracticable.” *Wright*, 259 F.R.D. at 472. Here, the proposed Class
10 consists of all Abaxis stockholders as of the close of business on August 31, 2012, excluding
11 Defendants and certain of their affiliates. Abaxis’ common stock trades on the NASDAQ under
12 the symbol “ABAX”. According to the 2012 Proxy, there were 21,932,263 shares of Abaxis
13 common stock outstanding as of August 31, 2012 held by hundreds, if not thousands, of beneficial
14 holders throughout the United States. Accordingly, the numerosity requirement is satisfied. *See*,
15 *e.g.*, *In re Wireless Facilities, Inc. Sec. Litig.*, 253 F.R.D. 630, 634-35 (S.D. Cal. 2008) (numerosity
16 prong satisfied where millions of shares of company stock were traded on national exchange and
17 stockholders were spread geographically throughout the United States).

18 **2. Commonality**

19 A class has sufficient commonality “if there are questions of fact and law which are
20 common to the class.” Fed. R. Civ. P. 23(a)(2). Here, “[t]he commonality requirement is satisfied
21 because the issue of whether [Abaxis] issued false and misleading proxy statements is common to
22 all class members.” *In re Apple Inc. Sec. Litig.*, No. 06-5208-JF-HRL, 2011 WL 1877988, at *2
23 (N.D. Cal. May 17, 2011).

24 **3. Typicality**

25 The typicality prerequisite is fulfilled if “the claims or defenses of the representative parties
26 are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). Here, the typicality
27 requirement is met because “the claims of [Plaintiff] are identical to ... those of other class
28

1 members” in that they “arise from [Abaxis]’s allegedly false and misleading proxy statement[.]” *In*
2 *re Apple*, 2011 WL 1877988, at *2.

3 **4. Adequacy**

4 “Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and
5 their counsel have any conflicts of interest with other class members and (2) will the named
6 plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Hanlon v.*
7 *Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). Here, there are no conflicts between Plaintiff
8 and its counsel and absent Class members, as Plaintiff will not receive any benefit from the
9 Settlement not shared by other Class members. Furthermore, Plaintiff’s Counsel vigorously
10 prosecuted the Action by, *inter alia*, obtaining the Injunction and opposing Defendants’ Motions to
11 Dismiss the Complaint. Accordingly, the adequacy requirement is satisfied.

12 **5. Rule 23(b)**

13 In addition to satisfying the four prerequisites of Rule 23(a), a class action must meet one of
14 the criteria set forth in Rule 23(b). *See* Fed. R. Civ. P. 23(b). Here, Plaintiff alleged that the
15 Individual Defendants breached their fiduciary duties to the Class and disseminated materially false
16 and misleading statements concerning the Plan Amendment. Under these circumstances, class
17 certification is appropriate under Rule 23(b)(1) and (b)(2) because all members of the stockholder
18 class are situated precisely similarly with respect to every issue of liability, to litigate the matters
19 separately would subject the defendant to the risk of different standards of conduct with respect to
20 the same action, and Plaintiff sought injunctive relief in the Action on behalf of the entire Class.
21 *See, e.g., TBK Partners, Ltd. v. Western Union Corp.*, 675 F.2d 456, 458-59 (2d Cir. 1982)
22 (affirming certification of class action pursuant to Fed. R. Civ. P. 23(b)(1)(A), (b)(1)(B) and (b)(2)
23 where plaintiff alleged, *inter alia*, that defendants disseminated materially false and misleading
24 information statement and breached fiduciary duties to stockholders); *Aguilar v. Melkonian*
25 *Enters., Inc.*, No. 05-0032-OWW-LJO, 2007 WL 201180, at *4-5 (E.D. Cal. Jan. 24, 2007) (class
26 certified under Fed. R. Civ. P. 23(b)(1) and (b)(2) for breach of fiduciary duty claims). *See also*
27 *Nottingham Partners v. Dana*, 564 A.2d 1089, 1094-97 (Del. 1989) (certification under (b)(2)

1 proper where “complaint alleged breaches of fiduciary duty and disclosure violations”); *In re Cox*
2 *Radio, Inc. S’holders Litig.*, No. 4461-VCP, 2010 WL 1806616, at *8 (Del. Ch. May 6, 2010)
3 (“actions challenging the propriety of director conduct in carrying out corporate transactions are
4 properly certifiable under both subdivisions (b)(1) and (b)(2).”).

5 **B. The Settlement Should be Preliminarily Approved**

6 “There is an overriding public interest in settling and quieting litigation.” *MWS Wire*
7 *Indus., Inc. v. California Fine Wire Co., Inc.*, 797 F.2d 799, 802 (9th Cir. 1986). Thus, “[a]
8 preliminary fairness assessment is not to be turned into a trial or rehearsal for trial on the merits, as
9 it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive
10 litigation that induce consensual settlements.” 2 *McLaughlin on Class Actions* § 6:7 (9th ed. 2012)
11 (citations and quotations omitted). Instead, preliminary approval of a settlement and notice to the
12 proposed class is appropriate “[i]f [1] the proposed settlement appears to be the product of serious,
13 informed, noncollusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant
14 preferential treatment to class representatives or segments of the class, and [4] falls with the range
15 of possible approval” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal.
16 2007) (citing *Manual for Complex Litigation*, Second § 30.44 (1985)). *See also In re NVIDIA*,
17 2008 WL 5382544, at *2 (preliminary approval appropriate where proposed settlement is fair,
18 reasonable, and adequate” and “not the product of fraud or overreaching by, or collusion between,
19 the negotiating parties.”). Here, this standard is easily met, and the Court should preliminarily
20 approve the Settlement.

21 **1. The Settlement is not a product of collusion**

22 The Settlement was negotiated by counsel for Plaintiff and Defendants over the course of
23 many months. *See* Stipulation at pp. 2:24-3:6. Plaintiff’s Counsel are experienced litigators with
24 substantial experience litigating class action and stockholder derivative actions. *See* Zagar Decl.,
25 Exhs. 2-3. Furthermore, counsel for Defendants — Gibson, Dunn & Crutcher, LLP — are some of
26 the most respected litigators in the world. *See, e.g.,* Zagar Decl., Exh. 4. These experienced
27 counsel did not rush to settle the Action. Rather, the Parties did not reach an agreement to settle
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1 the Action until after the Court granted Plaintiff's motion for preliminary injunction, the Parties
2 fully briefed Defendants' Motions to Dismiss, the Parties submitted supplemental briefing on
3 whether Plaintiff's claims regarding the Excess RSUs had been mooted and the Court heard oral
4 argument on Defendants' Motions to Dismiss. Accordingly, counsel were able to assess the
5 strengths and weaknesses of their claims and defenses. *See In re Tableware*, 484 F. Supp. 2d at
6 1080 (settlement preliminarily approved where "[e]xperienced counsel on both sides, each with a
7 comprehensive understanding of the strengths and weaknesses of each party's respective claims
8 and defenses, negotiated this settlement over an extended period of time . . .").

9
10 **2. The Settlement falls within the range of possible approval and has no obvious deficiencies**

11 Here, the proposed Settlement calls for the implementation of numerous corporate
12 governance reforms that specifically improve the manner in which Abaxis grants equity awards to
13 its employees and directors. *See* Section III, *supra*. The relief obtained as a result of the settlement
14 of the Action is comparable to the relief obtained in settlements of other stockholder actions
15 alleging breaches of fiduciary duty in connection with the compensation practices of public
16 corporations. For instance, in *In re Rambus Inc. Deriv. Litig.*, No. 06-3513-JF-HRL, 2009 WL
17 166689 (N.D. Cal. Jan. 20, 2009), the court approved a settlement providing for, among other
18 things, revisions to the compensation committee's charter to require annual review of equity
19 compensation awards and the retention of compensation consultants to assist the compensation
20 committee with the granting of equity awards. *See In re Rambus Inc. Deriv. Litig.*, No. 06-3513-
21 JF-HRL, Stipulation of Settlement at 10-13 (N.D. Cal. Oct. 29, 2008) (Zagar Decl., Exh. 5).
22 *Compare with* Sections III.1 & 6, *supra*. Similarly, in *Bacas v. Way*, No. 07-cv-0456-MH (S.D.
23 Tex.), the court approved a settlement that provided for, among other things, requiring all equity
24 grants to be made only at a meeting of the full board of directors or compensation committee. *See*
25 *Bacas v. Way*, No. 07-cv-0456, Stipulation of Settlement at 7-10 (S.D. Tex. Jan. 9, 2008) and
26 Order and Final Judgment (S.D. Tex. Apr. 1, 2008) (Zagar Decl., Exh. 6). *Compare with* Section
27 III.3, *supra*. Numerous other settlements further demonstrate that the relief obtained by Plaintiff in
28

1 the Settlement provides a substantial benefit, and that the Settlement falls within the range of
2 possible approval. *See, e.g., In re NVIDIA*, 2008 WL 5382544, at *1 (preliminarily approving
3 settlement where relief included “agreement to enact and/or continue numerous corporate
4 governance policies and changes that will strengthen NVIDIA’s internal controls and the
5 independence and accountability of its board of directors”); *City of Pontiac Gen. Employees’ Ret.*
6 *Sys. v. Langone*, No. 2006-cv-122304, Findings of Fact in Support of Order and Final Judgment
7 (Fulton County, Ga. June 10, 2008) (approving settlement implementing corporate governance
8 practices to address improper stock option granting practices) (Zagar Decl., Exh. 7). Accordingly,
9 the Settlement should be preliminarily approved.

10 In addition, as a result of the commencement and litigation of the Action, Plaintiff obtained
11 the Injunction and additional disclosures in connection with the 2012 Annual Meeting. Moreover,
12 at the time the Parties determined to settle the Action, Defendants had moved to dismiss Plaintiff’s
13 Complaint, arguing, *inter alia*, that they mooted Plaintiff’s damages claims by ratifying the Excess
14 RSUs. Thus, because additional litigation would likely be extensive and protracted, and Plaintiff
15 faced the real risk that it would not obtain any greater benefit through litigation, the Settlement
16 represents an excellent result for the Class and Abaxis and warrants preliminary approval.

17 **3. No Abaxis stockholder will receive preferential treatment**

18 No Abaxis stockholder will receive preferential treatment in connection with the
19 Settlement. Plaintiff has not received, nor will it receive, any payment for its role in connection
20 with the prosecution and settlement of the Action. *See* Zagar Decl., ¶ 11. Thus, all Class members
21 will benefit equally from the Settlement.

22 **V. THE NOTICE IS ADEQUATE**

23 “For any class certified under Rule 23(b)(1) or (b)(2), the court *may* direct appropriate
24 notice to the class.” Fed. R. Civ. P. 23(c)(2)(A) (emphasis added). Similarly, the Court has
25 discretion to direct notice to stockholders in connection with the settlement of stockholder
26 derivative litigation. *See* Fed. R. Civ. P. 23.1(c). Here, the Notice of the Settlement will be
27 distributed to all Abaxis stockholders by filing the Notice with the SEC. Such dissemination of
28

1 notice of a proposed settlement has been deemed adequate. *See, e.g., In re Sanmina-SCI Corp.*
 2 *Deriv. Litig.*, No. 06-03783-JF, Order (N.D. Cal. Feb. 27, 2009) (approving notice via press release
 3 and filing of Form 8-K) (Zagar Decl., Exh. 8). Furthermore, the Notice describes, *inter alia*: (1)
 4 the nature of the Action; (2) the definition of the Class; (3) that Class members may enter an
 5 appearance in the Action and, if desired, object to the Settlement; and (4) the time and manner for
 6 any such objection. *See* Fed. R. Civ. P. 23(c)(2)(B) (discussing requirements for content of
 7 mandatory notice for class certified pursuant to Fed. R. Civ. P. 23(b)(3), which are more onerous
 8 than requirements for elective notice pursuant to Rules 23(b)(1) and (2)). Accordingly, the Notice
 9 adequately protects the interests of absent Class members and should be approved.

10 VI. PROPOSED SCHEDULE OF EVENTS

11 In connection with preliminary approval of the Settlement, the parties request that the Court
 12 establish a date by which notice of the Settlement will be distributed to Abaxis stockholders, a date
 13 by which Abaxis stockholders may comment on the Settlement, and a date and time for a
 14 Settlement Hearing. As set forth in the Stipulation, Preliminary Order and Notice submitted
 15 herewith, the parties propose the following:

16 Abaxis files the Notice with the SEC.	Ten (10) calendar days after entry of the Preliminary Approval Order.
17	
18 Plaintiff files motion in support of final approval of Settlement.	Thirty five (35) calendar days prior to Settlement Hearing
19	
20 Defendants file any opposition to Plaintiff's motion in support of final approval of Settlement; Stockholder objections to Settlement due.	Twenty one (21) calendar days prior to Settlement Hearing.
21	
22 Defendants file proof of publication of Notice.	Twenty one (21) calendar days prior to Settlement Hearing.
23	
24 Plaintiff's Reply in support of final approval of Settlement.	Seven (7) calendar days prior to Settlement Hearing.
25 Settlement Hearing.	At least sixty (60) calendar days after entry of the Preliminary Approval Order.
26	
27	
28	

1 **VII. CONCLUSION**

2 For the reasons set forth herein, Plaintiff respectfully submits that the Court should enter
3 the Preliminary Order in the form submitted herewith.

4 DATED: January 17, 2014

**KESSLER TOPAZ MELTZER
& CHECK, LLP**

6 /s/ Eric Zagar

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Attorneys for Plaintiff

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

ST. LOUIS POLICE RETIREMENT SYSTEM,
On Behalf Of Itself and All Others Similarly
Situated 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

**DECLARATION OF ERIC L. ZAGAR IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT**

1 I, ERIC L. ZAGAR, declare as follows:

2 1. I am a partner of the law firm of Kessler Topaz Meltzer & Check, LLP (“Kessler
3 Topaz”), which, along with Saxena White, P.A. (“Saxena White”), is counsel for Plaintiff St. Louis
4 Police Retirement System (“Plaintiff”) in the above-captioned action (the “Action”). I have
5 personal knowledge of the matters stated herein based on my active participation in all material
6 aspects of the prosecution of this Action. If called upon, I could and would competently testify that
7 the following facts are true and correct.

8 2. I make this declaration in support of Plaintiff’s motion for preliminary approval of
9 the proposed settlement of the Action.

10 3. Attached hereto as Exhibit 1 is a true and correct copy of the January 16, 2014,
11 Stipulation of Settlement (the “Stipulation”) in the Action. Attached as Exhibits A – C of the
12 Stipulation are true and correct copies of the:

- 13 a. [Proposed] Order Preliminarily Approving Settlement and Providing for
14 Notice;
15 b. Notice of Pendency of Class and Derivative Action, Proposed Settlement of
16 Class and Derivative Action and Settlement Hearing and Right to Appear;
17 and
18 c. Final Order and Judgment.

19 4. Attached hereto as Exhibit 2 is a true and correct copy of the firm biography of
20 Kessler Topaz.

21 5. Attached hereto as Exhibit 3 is a true and correct copy of the firm biography of
22 Saxena White.

23 6. Attached hereto as Exhibit 4 is a true and correct copy of an article entitled Global
24 20: Gibson Dunn, *available at* [http://www.gibsondunn.com/publications/Documents/GDC-
25 Global20-8-13-13.pdf](http://www.gibsondunn.com/publications/Documents/GDC-Global20-8-13-13.pdf) (last visited on Jan. 17, 2014).

26 7. Attached hereto as Exhibit 5 is a true and correct copy of relevant portions of the
27 Stipulation of Settlement in *In re Rambus Inc. Deriv. Litig.*, No. 06-3513-JF-HRL (N.D. Cal.).
28

1 8. Attached hereto as Exhibit 6 is a true and correct copy of relevant portions of the
2 Stipulation of Settlement and Order and Final Judgment in *Bacas v. Way*, No. 07-0456-MH (S.D.
3 Tex.).

4 9. Attached hereto as Exhibit 7 is a true and correct copy of the Findings of Fact in
5 Support of Order and Final Judgment approving the settlement in *City of Pontiac Gen. Employees'*
6 *Ret. Sys. v. Langone*, No. 2006-cv-122304, (Fulton County, Ga.).

7 10. Attached hereto as Exhibit 8 is a true and correct copy of the Order Preliminarily
8 Approving Derivative Settlement and Providing for Notice in *In re Sanmina-SCI Corp. Deriv.*
9 *Litig.*, No. 06-03783-JF, (N.D. Cal.).

10 11. Plaintiff has not been promised, nor has it received or will it receive, any payment
11 for its role in connection with the prosecution and settlement of the Action.

12 I declare under penalty of perjury under the laws of the United States of America that the
13 foregoing is true and correct. Executed this 17th day of January, 2014.

14
15 

16 _____
Eric L. Zagar

Exhibit 1

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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.,

CASE NO. 12-CV-05086-YGR

Plaintiff,

v.

STIPULATION OF SETTLEMENT

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.

STIPULATION OF SETTLEMENT

1
2 This Stipulation of Settlement (the “Stipulation” or the “Settlement”), is made and entered
3 into by and among the following Parties (as defined further in ¶ 1.11 hereof), each by and through
4 their respective counsel: (i) St. Louis Police Retirement System (“Plaintiff”) on behalf of itself and
5 all others similarly situated, and derivatively on behalf of Abaxis, Inc. (“Abaxis” or the
6 “Company”); (ii) defendants Clinton H. Severson (“Severson”), Alberto R. Santa Ines (“Santa
7 Ines”), Kenneth P. Aron (“Aron”), Vladimir E. Ostoich (“Ostoich”), Donald P. Wood (“Wood”),
8 Martin V. Mulroy (“Mulroy”), Richard J. Bastiani (“Bastiani”), Michael D. Casey (“Casey”), Henk
9 J. Evenhuis (“Evenhuis”), Prithipal Singh (“Singh”), Vernon E. Altman (“Altman”) and Ernest S.
10 Tucker (“Tucker”) (collectively, the “Individual Defendants”); and (iii) nominal defendant Abaxis
11 (collectively with the Individual Defendants, “Defendants”). This Stipulation is intended by the
12 Parties to fully, finally and forever resolve, discharge and settle the Released Claims (as defined in
13 ¶ 1.17 hereof), upon and subject to the terms and conditions hereof. Capitalized terms not
14 otherwise defined shall have the definitions set forth in ¶¶ 1.1-1.18 below.

I. INTRODUCTION AND BACKGROUND OF THE ACTION

15
16 On October 1, 2012, Plaintiff filed in the Court a Verified Shareholder Class Action and
17 Derivative Complaint (the “Complaint”) that asserted class claims on behalf of a class of all persons
18 and entities that held common stock in Abaxis as of the close of business on August 31, 2012,
19 which represents the record date for the shareholders entitled to vote at Abaxis’s October 24, 2012
20 Annual Meeting (excluding the Individual Defendants, members of the immediate family of any
21 Individual Defendant, and any person, firm, trust, corporation, or other entity related to, or affiliated
22 with, any Individual Defendant (“Excluded Persons”), and the legal representatives, heirs,
23 successors or assigns of any such Excluded Person) (the “Class”). The Complaint also asserted
24 derivative claims on behalf of nominal defendant Abaxis against the Individual Defendants
25 alleging, *inter alia*, that: (1) the Grantor Defendants violated the terms of the Company’s 2005
26 Equity Incentive Plan (the “2005 Plan”) by purportedly granting to the Officer Defendants and
27 other Abaxis employees more restricted stock units (“Restricted Stock Units” or “RSUs”) than
28 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.

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;

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

H. The Company’s stock plan administrator shall:

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

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

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

- 1. If the Company is required to prepare an accounting restatement for any fiscal quarter or year due to the material noncompliance of the Company with any financial reporting requirement, and the Board determines that an officer’s misconduct contributed to the noncompliance that resulted in the obligation to restate the Company’s financial statements, the Board may require (i) in the case of the Company’s Chief Executive Officer and Chief Financial Officer, that each such individual repay to the Company the compensation listed in paragraphs (a), (b), and (c) below, regardless of which officer’s misconduct contributed to the noncompliance that resulted in the obligation to restate the Company’s financial statements, and (ii) in the case of any other officer whose misconduct contributed to the noncompliance which resulted in the obligation to restate the Company’s financial statements, that each such individual

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.

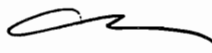
26 8.16 The Court shall retain jurisdiction with respect to implementation and enforcement
27 of the terms of the Stipulation, and the Parties submit to the jurisdiction of the Court for purposes of
28 implementing and enforcing the Settlement embodied in the Stipulation.

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

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

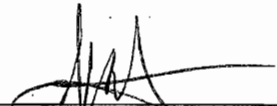
DATED: Jan. 16, 2014



KESSLER TOPAZ MELTZER
& CHECK, LLP
Eric L. Zagar
James H. Miller
Matthew A. Goldstein
280 King of Prussia Road
Radnor, Pennsylvania 19087

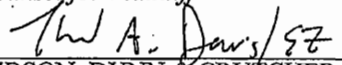
Counsel for Plaintiff

DATED: January 16, 2014



SAXENA WHITE, P.A.
Joseph E. White, III
Jonathan M. Stein
Lester R. Hooker
2424 N. Federal Highway, Suite 257
Boca Raton, FL 33431

DATED: Jan 16, 2014

Counsel for Plaintiff


GIBSON, DUNN & CRUTCHER LLP
Thad A. Davis
555 Mission Street, Suite 3000
San Francisco, CA 94105

*Counsel for Defendants 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, Ernest S. Tucker, and
Abaxis, Inc.*

Exhibit A

**KESSLER TOPAZ
MELTZER & CHECK, LLP**

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Fax: (415) 400-3001
egreenstein@ktmc.com

-and-

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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

**[PROPOSED] ORDER PRELIMINARILY
APPROVING SETTLEMENT AND
PROVIDING FOR NOTICE**

[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR NOTICE

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WHEREAS, Plaintiff has made an application for an order (i) preliminarily approving the settlement of the above-captioned action (the “Action”), in accordance with the Stipulation of Settlement dated January 16, 2014 (the “Stipulation” or “Settlement”), which, together with the exhibits annexed thereto, sets forth the terms and conditions of a proposed Settlement and dismissal of the Action with prejudice, upon the terms and conditions set forth therein; and (ii) approving distribution of the Notice of Proposed Settlement (attached to the Stipulation as Exhibit B);

WHEREAS, Defendants consent to the entry of this Order;

WHEREAS, all capitalized terms contained herein shall have the same meanings as set forth in the Stipulation (in addition to those capitalized terms defined herein); and

WHEREAS, this Court, having considered the Stipulation and the exhibits annexed thereto:

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Court does hereby preliminarily approve, subject to further consideration at the Settlement Hearing described below, the Stipulation and the Settlement set forth therein, including the terms and conditions for settlement and dismissal with prejudice of the Action.

2. For purposes of the Settlement only, and pending the Settlement Hearing (defined below), the Action is provisionally certified as a mandatory non-opt-out class action pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1) and 23(b)(2), on behalf of a class consisting 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”). For purposes of the Settlement only, Plaintiff St. Louis Police Retirement System shall be certified as the representative of the Class.

1 3. A hearing (the “Settlement Hearing”) shall be held before this Court on _____,
2 2014, at _____.m., at the Oakland Courthouse, Courtroom 5, 2nd Floor, 1301 Clay Street, Oakland,
3 CA 94612, to determine: (1) whether the Settlement of the Action on the terms and conditions
4 provided for in the Stipulation is fair, reasonable and adequate to Abaxis and Abaxis shareholders
5 and should be finally approved by the Court; (2) whether a Final Order and Judgment as provided in
6 ¶1.5 of the Stipulation should be entered herein, and (3) whether to approve Plaintiff’s Counsel’s
7 application for an award of attorneys’ fees and reimbursement of expenses (the “Fee Award”).

8 4. The Court approves, in form and content, the Notice (attached to the Stipulation as
9 Exhibit B) and finds that the distribution of the Notice substantially in the manner and form as set
10 forth in Exhibit B and in Paragraph 5 of this order meets the requirements of due process and all
11 other applicable laws, is the best notice practicable under the circumstances, and shall constitute
12 due and sufficient notice of the matters set forth therein for all purposes to all Persons entitled to
13 such notice.

14 5. Not later than ten (10) calendar days following entry of this Order, Abaxis shall
15 disseminate the Notice to Abaxis shareholders by causing the Notice to be filed with the United
16 States Securities and Exchange Commission on Form 8-K.

17 6. At least twenty one (21) calendar days prior to the Settlement Hearing, Abaxis’s
18 counsel shall serve on Plaintiff’s Counsel and file with the Court an appropriate affidavit attesting
19 to compliance with the Notice procedure set forth in this Order.

20 7. All Abaxis shareholders shall be bound by all orders, determinations and judgments
21 in the Action concerning the Settlement, whether favorable or unfavorable to Abaxis shareholders.

22 8. Pending final determination of whether the Settlement should be approved, no
23 Abaxis shareholders, either directly, representatively, derivatively, or in any other capacity, shall
24 commence or prosecute against any of the Defendants, any action or proceeding in any court or
25 tribunal asserting any of the Released Claims.

26 9. All papers in support of the Settlement, including Plaintiff’s Counsel’s application
27 for a Fee Award, shall be filed with the Court and served at least thirty-five (35) calendar days prior
28 to the Settlement Hearing.

1 10. All papers in opposition to the Settlement, including Defendants' Counsel's
2 opposition to Plaintiff's Counsel's application for a Fee Award, shall be filed with the Court and
3 served at least fourteen (14) calendar days prior to the Settlement Hearing.

4 11. Plaintiff's Counsel's reply brief, if any, shall be filed with the Court and served at
5 least seven (7) days prior to the Settlement Hearing.

6 12. Any Abaxis shareholder may appear and show cause if he, she or it has any reason
7 why the terms of the Stipulation, the Settlement of the Action, and/or the Fee Award should not be
8 approved as fair, reasonable and adequate, or why a Final Order and Judgment should not be
9 entered thereon, provided, however, unless otherwise ordered by the Court, no Abaxis shareholder
10 shall be heard or entitled to contest the approval of all or any of the terms and conditions of the
11 Stipulation, the Settlement, and/or the Fee Award, or, if approved, the Final Order and Judgment to
12 be entered thereon approving the same, unless that Person has, at least twenty-one (21) calendar
13 days prior to the Settlement Hearing, filed with the Clerk of the Court and delivered upon the
14 following counsel (delivered by hand or sent by first class mail) (1) a written objection to the
15 Settlement setting forth: (a) the nature of the objection; (b) proof of current ownership of Abaxis
16 common stock, including the number of shares of Abaxis common stock currently held and the date
17 of purchase of Abaxis common stock; and (c) any documentation in support of such objection; and
18 (2) if a current Abaxis shareholder intends to appear and requests to be heard at the Settlement
19 Hearing, such shareholder must have, in addition to the requirements of (1) above, (a) a written
20 notice of such shareholder's intention to appear; (b) a statement that indicates the basis for such
21 appearance; and (c) the identities of any witnesses the shareholder intends to call at the Settlement
22 Hearing and a statement as to the subjects of their testimony, signed as authorized by the objecting
23 shareholder, and copies of any papers and briefs in support thereof:

24 Eric L. Zagar
25 KESSLER TOPAZ MELTZER & CHECK, LLP
26 280 King of Prussia Road
27 Radnor, PA 19087

27 Jonathan M. Stein
28 SAXENA WHITE, P.A.
29 2424 N. Federal Highway, Suite 257
30 Boca Raton, FL 33431

1 *Counsel for Plaintiff St. Louis Retirement System*

2 and

3 Thad A. Davis
4 GIBSON, DUNN & CRUTCHER LLP
5 555 Mission Street, Suite 3000
San Francisco, CA 94105

6 *Counsel for Individual Defendants*

7 The written objections and copies of any papers and briefs in support thereof to be filed in
8 Court shall be delivered by hand or sent by first class mail to:

9 CLERK OF THE COURT
10 Oakland Courthouse
11 1301 Clay Street
Oakland, CA 94612

12 Any Abaxis shareholder who does not make his, her or its objection in the manner provided
13 herein shall be deemed to have waived such objection and shall forever be foreclosed from making
14 any objection to the fairness, reasonableness, or adequacy of the Settlement as incorporated in the
15 Stipulation and to the Fee Award, unless otherwise ordered by the Court, but shall otherwise be
16 bound by the Final Order and Judgment to be entered and the release to be given.

17 13. The provisions contained in the Stipulation (including any exhibits attached thereto)
18 shall not be deemed a presumption, concession, or admission by any Party of any fault, liability, or
19 wrongdoing, or lack of merit as to any facts or claims alleged or asserted in the Action or in any
20 other action or proceeding, and shall not be interpreted, construed, deemed, invoked, offered, or
21 received into evidence or otherwise used by any person in the Action or in any other action or
22 proceeding, whether civil, criminal, or administrative, except in connection with any proceeding to
23 enforce the terms of the Settlement.

24 14. All proceedings in the Action, other than as may be necessary to carry out the terms
25 and conditions of the Settlement, are hereby stayed and suspended pending final determination of
26 whether the Settlement provided for in the Stipulation shall be approved. Plaintiff and Abaxis
27 shareholders, or any them, are hereby barred and enjoined from commencing, prosecuting,
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1 instigating, continuing, or in any way participating in the commencement or prosecution of any
2 action, in any forum, asserting any Released Claims against any of the Released Persons.

3 15. The Court reserves the right to adjourn the date of the Settlement Hearing or modify
4 any other dates set forth herein without further notice to the Abaxis shareholders, and retains
5 jurisdiction to consider all further applications arising out of or connected with the Settlement.

6 16. The Court may approve the Settlement, with such modifications as may be agreed to
7 by the Parties, if appropriate, without further notice to Abaxis shareholders.

8 IT IS SO ORDERED.

9

10 DATED: _____

HONORABLE YVONNE GONZALEZ ROGERS

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Exhibit B

**KESSLER TOPAZ
MELTZER & CHECK, LLP**

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One Sansome Street, Suite 1850
San Francisco, CA 94104
Phone: (415) 400-3000
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-and-

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James H. Miller
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Phone: (610) 667-7706
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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.,

CASE NO. 12-CV-05086-YGR

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.

NOTICE OF PENDENCY OF CLASS AND DERIVATIVE ACTION, PROPOSED SETTLEMENT OF CLASS AND DERIVATIVE ACTION AND SETTLEMENT HEARING AND RIGHT TO APPEAR

TO: ALL PERSONS OR ENTITIES WHO HELD SHARES OF THE COMMON STOCK OF ABAXIS, INC. (“ABAXIS” OR THE “COMPANY”) AS OF THE CLOSE OF BUSINESS ON AUGUST 31, 2012 (THE “RECORD DATE”), EITHER OF RECORD OR BENEFICIALLY, INCLUDING THEIR RESPECTIVE SUCCESSORS IN INTEREST, SUCCESSORS, PREDECESSORS IN INTEREST, PREDECESSORS, REPRESENTATIVES, TRUSTEES, EXECUTORS, ADMINISTRATORS, HEIRS, ASSIGNS OR TRANSFEREES, IMMEDIATE AND REMOTE, AND ANY PERSON OR ENTITY ACTING FOR OR ON BEHALF OF, OR CLAIMING UNDER, ANY OF THEM, AND EACH OF THEM, TOGETHER WITH THEIR PREDECESSORS AND SUCCESSORS AND ASSIGNS (“ABAXIS SHAREHOLDERS”).

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF A CLASS AND DERIVATIVE ACTION AND CONTAINS IMPORTANT INFORMATION. YOUR RIGHTS WILL BE AFFECTED BY THESE LEGAL PROCEEDINGS IN THIS LITIGATION.

IF YOU WERE NOT THE BENEFICIAL HOLDER OF COMMON STOCK OF ABAXIS BUT HELD SUCH STOCK FOR A BENEFICIAL HOLDER, PLEASE TRANSMIT THIS DOCUMENT PROMPTLY TO SUCH BENEFICIAL HOLDER.

THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY CLAIMS OR DEFENSES BY ANY OF THE PARTIES. IT IS BASED ON STATEMENTS OF THE PARTIES AND IS SENT FOR THE SOLE PURPOSE OF INFORMING YOU OF THE EXISTENCE OF THIS ACTION AND OF A HEARING ON A PROPOSED SETTLEMENT SO THAT YOU MAY MAKE APPROPRIATE DECISIONS AS TO STEPS YOU MAY, OR MAY NOT, WISH TO TAKE IN RELATION TO THIS ACTION.

Notice is hereby provided to you of the proposed Settlement (as defined herein) of this shareholder class and derivative litigation. This Notice is provided by Order of the United States District Court for the Northern District Court of California, (the “Court”). It is not an expression of any opinion by the Court with respect to the truth of the allegations in the litigation or the merits of the claims or defenses asserted by or against any party. It is solely to notify you of the terms of the proposed Settlement, and your rights related thereto.

PLEASE NOTE: THERE IS NO CLAIMS PROCEDURE, AS NO INDIVIDUAL SHAREHOLDER HAS THE RIGHT TO BE COMPENSATED AS A RESULT OF THE SETTLEMENT DESCRIBED BELOW.

1 **I. WHY THE COMPANY HAS ISSUED THIS NOTICE**

2 Your rights may be affected by the settlement of the action styled *St. Louis Police*
3 *Retirement System v. Severson, et al.*, Case No. 12-CV-05086-YGR (the “Action”). Plaintiff St.
4 Louis Police Retirement System (“Plaintiff”), the Individual Defendants, and nominal defendant
5 Abaxis have agreed upon terms to settle the Action and have signed a written Stipulation of
6 Settlement (the “Stipulation” or the “Settlement”) setting forth those settlement terms. Capitalized
7 terms not otherwise defined shall have the definitions set forth in the Stipulation.

8 **II. SUMMARY OF THE ACTION**

9 On October 1, 2012, Plaintiff filed in the Court a Verified Shareholder Class Action and
10 Derivative Complaint (the “Complaint”) that asserted class claims on behalf of a class of all persons
11 and entities that held common stock in Abaxis as of the close of business on August 31, 2012,
12 which represents the Record Date for the shareholders entitled to vote at Abaxis’s October 24, 2012
13 Annual Meeting (excluding the Individual Defendants, members of the immediate family of any
14 Individual Defendant, and any person, firm, trust, corporation, or other entity related to, or affiliated
15 with, any Individual Defendant (“Excluded Persons”), and the legal representatives, heirs,
16 successors or assigns of any such Excluded Person) (the “Class”). The Complaint also asserted
17 derivative claims on behalf of nominal defendant Abaxis against the Individual Defendants
18 alleging, *inter alia*, that: (1) the Grantor Defendants violated the terms of the Company’s 2005
19 Equity Incentive Plan (the “2005 Plan”) by purportedly granting to the Officer Defendants and
20 other Abaxis employees more restricted stock units (“Restricted Stock Units” or “RSUs”) than
21 could be settled pursuant to the 500,000 share limit contained in the 2005 Plan (the “Restricted
22 Stock Limit”); and (2) in total, the Abaxis board of directors (the “Board”) issued 870,179 shares of
23 common stock upon settlement of Restricted Stock Units granted under the 2005 Plan since October
24 2005 (370,179 shares in excess of the Restricted Stock Limit) and granted a total of 2,045,000
25 Restricted Stock Units pursuant to the 2005 Plan (representing, if settled, 1,545,000 shares more
26 than could be issued in accordance with the Restricted Stock Limit) (the “Excess RSUs”).

27 Also on October 1, 2012, Plaintiff filed a motion for preliminary injunction seeking to
28 enjoin Abaxis’ annual meeting of shareholders scheduled for October 24, 2012 (the “Annual

1 Meeting”) because the Company’s September 27, 2012 Form DEF 14A proxy statement (the “2012
2 Proxy”) allegedly contained materially false and misleading statements regarding a proposed
3 amendment to the 2005 Plan (the “Plan Amendment”).

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

11 On December 28, 2012, Defendants filed motions to dismiss Plaintiff’s derivative claims
12 contained in the Complaint (the “Motions to Dismiss”), in which Defendants argued that Plaintiff,
13 *inter alia*, failed to adequately plead demand futility and failed to state a claim for relief.
14 Defendants’ Motions to Dismiss have been fully briefed and oral argument was held on May 7,
15 2013. At the request of the Parties, the Court agreed to defer ruling on the Motions to Dismiss
16 pending the Parties’ efforts to reach a settlement of the Action.

17 Counsel for the Parties engaged in settlement negotiations in or about May 2013 and
18 attended a mediation on September 20, 2013, and, following the exchange of numerous proposals
19 and counter proposals, and related negotiations, the Parties reached an agreement in principle to
20 settle the Action on the terms set forth herein, which include changes to the Company’s corporate
21 governance practices and policies. However, the Parties did not begin negotiating the amount of
22 attorneys’ fees and expenses payable to Plaintiff’s Counsel as a result of the benefits conferred due
23 to the prosecution and settlement of the Action until after the substantive terms of the Settlement
24 were negotiated and agreed to. On or about December 10, 2013, the Parties entered into a
25 memorandum of understanding memorializing their agreement in principle to settle the Action.
26 Following additional negotiations among the Parties, the Parties have been unable to agree upon the
27 amount of attorneys’ fees and expenses payable to Plaintiff’s Counsel.

1 **III. TERMS OF THE PROPOSED SETTLEMENT**

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

- 7 1) The Compensation Committee Charter shall be revised to require the Compensation
8 Committee on an annual basis to review, with the assistance of outside counsel,
9 Abaxis's equity incentive plans;
- 10 2) Prior to the granting of any equity incentive award(s) to executive officers, the Board
11 and/or Compensation Committee shall review, with the assistance of outside
12 counsel, Abaxis's equity incentive plans to ensure compliance therewith;
- 13 3) Equity awards to executive officers shall be approved at a meeting of the
14 Compensation Committee or Board, as applicable, and not by unanimous written
15 consent;
- 16 4) Abaxis directors shall be required to receive annual education on relevant topics,
17 *e.g.*, administration of the Company's compensation plans, disclosure obligations to
18 shareholders and the Company's NASDAQ listing requirements;
- 19 5) The Company's annual proxy statement shall disclose to shareholders whether all
20 equity awards granted during the prior fiscal year were granted in compliance with
21 the terms of the Company's equity incentive plans;
- 22 6) The Board or Compensation Committee shall retain an independent compensation
23 consultant each year;
- 24 7) The Compensation Committee Charter shall be revised to require the Compensation
25 Committee to consist of at least three (3) members;
- 26 8) The Company's stock plan administrator shall:
- 27 a. Become a member of the National Association of Stock Plan Professionals;
28 and
- b. Attend a minimum of eight (8) hours of training sponsored by the National
Association of Stock Plan Professionals per fiscal year for the next five (5)
fiscal years;
- 9) The Company, with the assistance of outside counsel, will conduct an annual
training session for the Company's stock plan administrator regarding equity
incentive plan administration procedures;
- 10) The Company will adopt a compensation clawback policy that includes the
following provisions, among other things:

1 a. If the Company is required to prepare an accounting restatement for any
2 fiscal quarter or year due to the material noncompliance of the Company with
3 any financial reporting requirement, and the Board determines that an
4 officer's misconduct contributed to the noncompliance that resulted in the
5 obligation to restate the Company's financial statements, the Board may
6 require (i) in the case of the Company's Chief Executive Officer and Chief
7 Financial Officer, that each such individual repay to the Company the
8 compensation listed in paragraphs (1), (2) and (3) below, regardless of which
9 officer's misconduct contributed to the noncompliance that resulted in the
10 obligation to restate the Company's financial statements, and (ii) in the case
11 of any other officer whose misconduct contributed to the noncompliance
12 which resulted in the obligation to restate the Company's financial
13 statements, that each such individual repay to the Company the
14 Compensation listed in paragraphs (1), (2) and (3) below, in each case as and
15 to the extent permitted by applicable law:

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

29 b. The Board may seek recoupment from the officer(s) from any of the
30 following sources: prior incentive compensation payments; future payments
31 of incentive compensation; cancellation of outstanding equity awards; future
32 equity awards; and direct repayment. To the extent permitted by applicable
33 law, the Company may offset such amount against any compensation or other
34 amounts owed by the Company to the officer. If an amount repaid to the
35 Company under the policy will not be fully deductible by the officer, the
36 Board may, in its discretion, reduce the amount to be repaid by the amount
37 determined by the Board to reasonably take into account the adverse tax
38 consequences of such repayment to the officer.

1 The Settlement provides that, upon the Effective Date of the Settlement, Plaintiff, Abaxis
 2 and each member of the Class (solely in his, her or its capacity as a Abaxis shareholder) shall be
 3 deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, and
 4 forever released, relinquished and discharged the Released Claims against the Released Persons and
 5 any and all claims (including Unknown Claims) arising out of, relating to, or in connection with, the
 6 defense, settlement or resolution of the Action against the Released Persons. Upon the Effective
 7 Date each of the Released Persons and each Abaxis shareholder shall be deemed to have, and by
 8 operation of the Final Order and Judgment shall have, fully, finally, and forever released,
 9 relinquished and discharged Plaintiff and Plaintiff’s Counsel from all claims (including Unknown
 10 Claims) arising out of, relating to, or in connection with, the institution, prosecution, assertion,
 11 settlement or resolution of the Action or the Released Claims.

12 With respect to any and all Released Claims, the Parties stipulate and agree that, upon the
 13 effective date of the Settlement, Plaintiff, the Individual Defendants, and Abaxis shall expressly
 14 waive and each of the Abaxis shareholders shall be deemed to have, and by operation of the Final
 15 Order and Judgment shall have, expressly waived any and all provisions, rights and benefits
 16 conferred by any law of any jurisdiction or any state or territory of the United States, or principle of
 17 common law, which is similar, comparable or equivalent to California Civil Code § 1542, which
 18 provides:

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

24 The Plaintiff, Individual Defendants, Abaxis and Abaxis shareholders may hereafter discover facts
 25 in addition to or different from those which he, she or it now knows or believes to be true with
 26 respect to the subject matter of the Released Claims, but, upon the effective date of the Settlement,
 27 the Plaintiff, Individual Defendants and Abaxis shall expressly settle and release, and each Abaxis
 28 shareholder shall be deemed to have, and by operation of the Final Order and Judgment shall have,
 fully, finally, and forever settled and released, any and all Released Claims, known or unknown,
 suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which

1 now exist, or heretofore have existed upon any theory of law or equity now existing or coming into
2 existence in the future, including, but not limited to, conduct which is negligent, intentional, with or
3 without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or
4 existence of such different or additional facts. The Parties acknowledge, and Abaxis shareholders
5 shall be deemed by operation of the Final Order and Judgment to have acknowledged, that the
6 foregoing waiver was separately bargained for and is a key element of the Settlement of which this
7 release is a part.

8 **IV. MEMBERS OF THE CLASS**

9 The Court has ordered, for purposes of the Settlement only, and pending the Settlement
10 Hearing, that the Action is provisionally certified as a mandatory non-opt-out class action, pursuant
11 to Federal Rules of Civil Procedure 23(a), 23(b)(1) and 23(b)(2), on behalf of a class consisting of
12 all persons and entities that held common stock in Abaxis as of the close of business on August 31,
13 2012, which represents the Record Date for the shareholders entitled to vote at Abaxis's October
14 24, 2012 Annual Meeting (excluding the Individual Defendants, members of the immediate family
15 of any Individual Defendant, and any person, firm, trust, corporation, or other entity related to, or
16 affiliated with, any Individual Defendant ("Excluded Persons"), and the legal representatives, heirs,
17 successors or assigns of any such Excluded Person) (the "Class").

18 **V. PLAINTIFF'S COUNSEL'S ATTORNEYS' FEES AND EXPENSES**

19 Plaintiff contends that its counsel is entitled to an award of attorneys' fees and expenses for
20 their role in the prosecution and settlement of the Action, and the Parties have attempted to
21 negotiate an amount of fees and expenses to be paid to Plaintiff's Counsel. As of the date of this
22 Notice, the Parties have not reached agreement on an award of attorneys' fees and expenses.
23 Plaintiff's Counsel intend to apply to the Court for an award of attorneys' fees and expenses of no
24 more than \$2,000,000 in the aggregate, and the Parties intend to, and do, preserve all arguments in
25 connection with any petition for attorneys' fees and expenses by Plaintiffs' Counsel. Defendants
26 may oppose the amount of any application for fees and expenses made by Plaintiff. Abaxis and/or
27 its insurance carrier shall pay such fees and expenses as may be awarded by the Court (the "Fee
28 Award"). Any failure of the Court to approve the Settlement shall have no impact on or preclude

1 Plaintiff's Counsel from applying for the Fee Award on grounds of mootness, and Defendants
2 reserve the right to oppose any such application. However, any failure by the Parties to reach
3 agreement in the Stipulation on an amount of fees and expenses, or by the Court to approve the Fee
4 Award, shall not affect the validity of the Settlement.

5 Except for the attorneys' fees and expenses referred to above and the costs of providing and
6 administering this notice, to the extent ordered by the Court, Defendants shall not be required to
7 bear any other expenses, costs, damages, or fees alleged or incurred by Plaintiff or any Abaxis
8 shareholder, or by any of their respective attorneys, experts, advisors, agents, or representatives.
9 Defendants shall have no responsibility for, and no liability with respect to, the allocation of fees or
10 expenses among counsel for Plaintiff and/or any other person who may assert a claim to the Fee
11 Award.

12 **VI. REASONS FOR THE SETTLEMENT**

13 The Parties have determined that it is desirable and beneficial that the Action, and all of
14 their disputes related thereto, be fully and finally settled in the manner and upon the terms and
15 conditions set forth in the Stipulation.

16 **A. Why Did Plaintiff Agree to Settle?**

17 Plaintiff believes that the claims it has asserted in the Action have merit. Plaintiff, however,
18 recognizes and acknowledges the expense and length of continued proceedings necessary to
19 prosecute the Action against the Individual Defendants through trial and appeals. Plaintiff and its
20 counsel have also taken into account the uncertain outcome and the risk of any litigation, especially
21 in complex actions such as the Action, as well as the difficulties and delays inherent in such
22 litigation. Plaintiff and its counsel are also mindful of the inherent problems of proof and possible
23 defenses to the claims asserted in the Action. Based on their evaluation, Plaintiff and its counsel
24 have determined that the Settlement set forth in this Notice is in the best interests of Abaxis and its
25 shareholders. Plaintiff's Counsel believe that the Settlement set forth in the Stipulation confers
26 substantial benefits upon Abaxis and its shareholders. Plaintiff's Counsel base this conclusion
27 upon, *inter alia*, their extensive investigation during the development, prosecution and settlement of
28 the Action, which included, *inter alia*: (i) inspecting, reviewing and analyzing the Company's

1 filings with the SEC; (ii) researching corporate governance issues; and (iii) researching the
2 applicable law with respect to the claims asserted in the Action and the potential defenses thereto.

3 **B. Why Did the Defendants Agree to Settle?**

4 The Individual Defendants have denied, and continue to deny, that they have committed any
5 breach of fiduciary duty, waste of assets, or any other violation of law or engaged in any of the
6 wrongful acts alleged in the Action, or that they have been unjustly enriched by any of the acts
7 alleged in the Action, and expressly maintain that they diligently and scrupulously complied with
8 their fiduciary and other legal duties, to the extent such duties exist. Nonetheless, the Individual
9 Defendants have also taken into account the uncertainty and risks inherent in any litigation,
10 especially in complex cases like the Action. Therefore, they have determined that it is desirable and
11 beneficial that the Action be fully and finally settled in the manner and upon the terms and
12 conditions set forth in this Notice. Abaxis believes that the Settlement set forth in this Notice
13 confers benefits upon Abaxis and its shareholders and that the Settlement is in the best interests of
14 Abaxis and its shareholders.

15 **VII. THE SETTLEMENT HEARING**

16 The Settlement Hearing shall be held at Oakland Courthouse, 1301 Clay Street, Oakland,
17 CA 94612, on [date] at [time]. The purpose of the Settlement Hearing is to determine: (a) whether
18 the Court should certify the Action as a non-opt-out class action pursuant to Fed. R. Civ. P. 23; (b)
19 whether the Court should approve the proposed Settlement; (c) whether the Court should enter an
20 Order and Final Judgment dismissing the claims asserted in the Action on the merits and with
21 prejudice and effectuating the releases described below; (d) whether the Court should grant the
22 application of Plaintiff's Counsel for a Fee Award; and (e) such other matters as may properly come
23 before the Court. The Court reserves the right to approve the Settlement at or after the Settlement
24 Hearing with such modification(s) as may be consented to by the Parties to the Stipulation and
25 without further notice to Abaxis shareholders.

26 Pending final determination of whether the Settlement should be approved, no current
27 Abaxis shareholder, either directly, representatively, derivatively, or in any other capacity, shall
28

1 commence or prosecute against any of the Released Persons an action or proceeding in any court,
2 administrative agency, or other tribunal asserting any of the Released Claims.

3 **VIII. RIGHT TO APPEAR AT SETTLEMENT HEARING**

4 Any Abaxis shareholder may, but is not required to, appear in person at the Settlement
5 Hearing. If you want to object at the Settlement Hearing, then you must first comply with the
6 procedures for objecting, which are set forth below. The Court reserves the right to adjourn the
7 Settlement Hearing or any adjournment thereof, including the consideration of the Fee Award,
8 without further notice of any kind other than oral announcement at the Settlement Hearing or any
9 adjournment thereof. Thus, if you are planning to attend the Settlement Hearing, you should
10 confirm the date and time before going to Court. **ABAXIS SHAREHOLDERS WHO HAVE NO**
11 **OBJECTION TO THE SETTLEMENT DO NOT NEED TO APPEAR AT THE**
12 **SETTLEMENT HEARING OR TAKE ANY OTHER ACTION.**

13 **IX. PROCEDURES FOR OBJECTING TO THE SETTLEMENT**

14 Any Abaxis shareholder who objects to the Settlement, the Order and Final Judgment to be
15 entered in the Action, and/or Plaintiff's Counsel's application for a Fee Award, or who otherwise
16 wishes to be heard, may appear in person or by his attorney at the Settlement Hearing and present
17 evidence or argument that may be proper and relevant; provided, however, that, except for good
18 cause shown, no person shall be heard and no papers, briefs, pleadings or other documents
19 submitted by any person shall be considered by the Court unless not later than twenty one (21)
20 calendar days prior to the Settlement Hearing such person files with the Clerk of the Court and
21 delivers upon the following counsel (delivered by hand or sent by first class mail) (1) a written
22 objection to the Settlement setting forth: (a) the nature of the objection; (b) proof of current
23 ownership of Abaxis common stock, including the number of shares of Abaxis common stock
24 currently held and the date of purchase of Abaxis common stock; and (c) any documentation in
25 support of such objection; and (2) if a current Abaxis shareholder intends to appear and requests to
26 be heard at the Settlement Hearing, such shareholder must have, in addition to the requirements of
27 (1) above, (a) a written notice of such shareholder's intention to appear; (b) a statement that
28 indicates the basis for such appearance; and (c) the identities of any witnesses the shareholder

1 intends to call at the Settlement Hearing and a statement as to the subjects of their testimony, signed
2 as authorized by the objecting shareholder.

3 Such filings shall be delivered to the following counsel:

4 Eric L. Zagar
5 KESSLER TOPAZ MELTZER & CHECK, LLP
6 280 King of Prussia Road
7 Radnor, PA 19087

8 Jonathan M. Stein
9 SAXENA WHITE, P.A.
10 2424 N. Federal Highway, Suite 257
11 Boca Raton, FL 33431

12 *Counsel for Plaintiff St. Louis Police Retirement System*

13 and

14 Thad A. Davis
15 GIBSON, DUNN & CRUTCHER LLP
16 555 Mission Street, Suite 3000
17 San Francisco, CA 94105

18 *Counsel for Individual Defendants*

19 Unless the Court otherwise directs, no person shall be entitled to object to the approval of
20 the Settlement, any judgment entered thereon, any Fee Award, or otherwise be heard, except by
21 serving and filing a written objection and supporting papers and documents as prescribed above.
22 Any person who fails to object in the manner described above shall be deemed to have waived the
23 right to object (including any right of appeal) and shall be forever barred from raising such
24 objection in this or any other action or proceeding. **Any Abaxis shareholder who does not object
25 to the Settlement or the request by Plaintiff’s Counsel for a Fee Award or to any other matter
26 stated above need not do anything.**

27 **X. NOTICE TO PERSONS OR ENTITIES THAT HOLD OWNERSHIP ON BEHALF
28 OF OTHERS**

Brokerage firms, banks and/or other persons or entities that hold shares of the common
stock of Abaxis as of the Record Date for the benefit of others are requested to promptly send this
Notice to all of their respective beneficial owners. If additional copies of the Notice are needed for
forwarding to such beneficial owners, any requests for such copies may be made to:

1 Thad A. Davis
2 GIBSON, DUNN & CRUTCHER LLP
3 555 Mission Street, Suite 3000
4 San Francisco, CA 94105

5 **XI. HOW TO OBTAIN ADDITIONAL INFORMATION**

6 This Notice summarizes the Stipulation. It is not a complete statement of the events of the
7 Action or the terms of the Settlement contained in the Stipulation.

8 You may inspect the Stipulation and other papers in the Action at the Oakland Courthouse
9 clerk’s office at any time during regular business hours of each business day. The clerk’s office is
10 located at Suite 400S, 1301 Clay Street, Oakland, CA 94612. However, you must appear in person
11 to inspect these documents. The clerk’s office will not mail copies to you. The Stipulation may be
12 available on the United States District Court for the Northern District of California Information web
13 site at <http://www.cand.uscourts.gov>.

14 ***PLEASE DO NOT CALL, WRITE OR OTHERWISE DIRECT QUESTIONS TO***
15 ***EITHER THE COURT OR THE CLERK’S OFFICE.*** Inquiries or comments about the
16 Settlement or any other matters in this Notice should be directed by telephone or in writing to the
17 attention of Plaintiff’s Counsel, Eric L. Zagar, Kessler Topaz Meltzer & Check, LLP, 280 King of
18 Prussia Road, Radnor, PA 19087, 1-888-299-7706.

19 DATED: _____

HONORABLE YVONNE GONZALEZ ROGERS

Exhibit C

**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

FINAL ORDER AND JUDGMENT

FINAL ORDER AND JUDGMENT

This matter came before the Court for hearing pursuant to the Order of this Court, dated _____ (“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 the Exhibits thereto (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 ____ day of _____, 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 disseminated to Abaxis shareholders
25 satisfied the requirements of due process and all other applicable laws, and constitutes
26 due and sufficient notice to all persons entitled thereto.

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 \$_____ for attorneys'
22 fees and reimbursement of expenses, subject to Plaintiff's Counsels' joint and several
23 obligations to refund or repay within ten (10) business days any amounts paid if, for any
24 reason, including as a result of any appeal and/or further proceedings on remand, or
25 successful 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 with respect to implementation and
13 enforcement of the terms of the Stipulation.

14 19. If for any reason the Settlement does not become effective in accordance
15 with the terms of the Stipulation, the Parties shall be restored to their respective positions
16 in the Action as provided in the Stipulation, this Final Order and Judgment shall be
17 vacated and all orders entered and releases delivered in connection with the Stipulation
18 and this Final Order and Judgment shall be null and void, except as otherwise provided
19 for in ¶ 7.3 of the Stipulation. If, for any reason, including as a result of any appeal
20 and/or further proceedings on remand, or successful collateral attack, the amount of
21 attorneys' fee and reimbursement of expenses as set forth in Paragraph 15 of this order is
22 lowered, overturned, or reduced, such an event will not affect the validity of the
23 Settlement.

24 //

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

4 IT IS SO ORDERED.

5

6 DATED: _____

HONORABLE YVONNE GONZALEZ
ROGERS

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Exhibit 2



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FIRM PROFILE

Since 1987, Kessler Topaz Meltzer & Check, LLP has specialized in the prosecution of securities class actions and has grown into one of the largest and most successful shareholder litigation firms in the field. With offices in Radnor, Pennsylvania and San Francisco, California, the Firm is comprised of 94 attorneys as well as an experienced support staff consisting of over 80 paralegals, in-house investigators, legal clerks and other personnel. With a large and sophisticated client base (numbering over 180 institutional investors from around the world -- including public and Taft-Hartley pension funds, mutual fund managers, investment advisors, insurance companies, hedge funds and other large investors), Kessler Topaz has developed an international reputation for excellence and has extensive experience prosecuting securities fraud actions. For the past several years, the National Law Journal has recognized Kessler Topaz as one of the top securities class action law firms in the country. In addition, the Legal Intelligencer recently awarded Kessler Topaz with its Class Action Litigation Firm of The Year award. Lastly, Kessler Topaz and several of its attorneys are regularly recognized by Legal500 and Benchmark: Plaintiffs as leaders in our field.

Currently, Kessler Topaz is serving as lead or co-lead counsel in many of the largest and most significant securities class actions pending in the United States, including actions against: Bank of America, Duke Energy, Lehman Brothers, Hewlett Packard, Johnson & Johnson, JPMorgan Chase, Morgan Stanley, Pfizer, and MGM Mirage, among others. As demonstrated by the magnitude of these high-profile cases, we take seriously our role in advising clients to seek lead plaintiff appointment in cases, paying special attention to the factual elements of the fraud, the size of losses and damages, and whether there are viable sources of recovery.

Kessler Topaz has recovered billions of dollars in the course of representing defrauded shareholders from around the world and takes pride in the reputation we have earned for our dedication to our clients. Kessler Topaz devotes significant time to developing relationships with its clients in a manner that enables the Firm to understand the types of cases they will be interested in pursuing and their expectations. Further, the Firm is committed to pursuing meaningful corporate governance reforms in cases where we suspect that systemic problems within a company could lead to recurring litigation and where such changes also have the possibility to increase the value of the underlying company. The Firm is poised to continue protecting rights worldwide.

NOTEWORTHY ACHIEVEMENTS

During the Firm's successful history, Kessler Topaz has recovered billions of dollars for defrauded stockholders and consumers. The following are among the Firm's notable achievements:

Securities Fraud Litigation

In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation, Master File No. 09 MDL 2058:

Kessler Topaz, as Co-Lead Counsel, brought an action on behalf of lead plaintiffs that asserted claims for violations of the federal securities laws against Bank of America Corp. ("BoA") and certain of BoA's officers and board members relating to BoA's merger with Merrill Lynch & Co. ("Merrill") and its failure to inform its shareholders of billions of dollars of losses which Merrill had suffered before the pivotal shareholder vote, as well as an undisclosed agreement allowing Merrill to pay up to \$5.8 billion in bonuses before the acquisition closed, despite these losses. On September 28, 2012, the Parties announced a \$2.425 billion case settlement with BoA to settle all claims asserted against all defendants in the action which has since received final approval from the Court. BoA also agreed to implement significant corporate governance improvements. The settlement, reached after almost four years of litigation with a trial set to begin on October 22, 2012, amounts to 1) the sixth largest securities class action lawsuit settlement ever; 2) the fourth largest securities class action settlement ever funded by a single corporate defendant; 3) the single largest settlement of a securities class action in which there was neither a financial restatement involved nor a criminal conviction related to the alleged misconduct; 4) the single largest securities class action settlement ever resolving a Section 14(a) claim (the federal securities provision designed to protect investors against misstatements in connection with a proxy solicitation); and 5) by far the largest securities class action settlement to come out of the subprime meltdown and credit crisis to date.

In re Tyco International, Ltd. Sec. Litig., No. 02-1335-B (D.N.H. 2002):

Kessler Topaz, which served as Co-Lead Counsel in this highly publicized securities fraud class action on behalf of a group of institutional investors, achieved a record \$3.2 billion settlement with Tyco International, Ltd. ("Tyco") and their auditor PricewaterhouseCoopers ("PwC"). The \$2.975 billion settlement with Tyco represents the single-largest securities class action recovery from a single corporate defendant in history. In addition, the \$225 million settlement with PwC represents the largest payment PwC has ever paid to resolve a securities class action and is the second-largest auditor settlement in securities class action history.

The action asserted federal securities claims on behalf of all purchasers of Tyco securities between December 13, 1999 and June 7, 2002 ("Class Period") against Tyco, certain former officers and directors of Tyco and PwC. Tyco is alleged to have overstated its income during the Class Period by \$5.8 billion through a multitude of accounting manipulations and shenanigans. The case also involved allegations of looting and self-dealing by the officers and directors of the Company. In that regard, Defendants L. Dennis Kozlowski, the former CEO and Mark H. Swartz, the former CFO have been sentenced to up to 25 years in prison after being convicted of grand larceny, falsification of business records and conspiracy for their roles in the alleged scheme to defraud investors.

As presiding Judge Paul Barbadoro aptly stated in his Order approving the final settlement, "[i]t is difficult to overstate the complexity of [the litigation]." Judge Barbadoro noted the extraordinary effort required to pursue the litigation towards its successful conclusion, which included the review of more than 82.5 million pages of documents, more than 220 depositions and over 700 hundred discovery requests and responses. In addition to the complexity of the litigation, Judge Barbadoro also highlighted the great risk undertaken by Co-Lead Counsel in pursuit of the litigation, which he indicated was greater than in other multi-billion dollar securities cases and "put [Plaintiffs] at the cutting edge of a rapidly changing area of law."

In sum, the Tyco settlement is of historic proportions for the investors who suffered significant financial losses and it has sent a strong message to those who would try to engage in this type of misconduct in the future.

In re Tenet Healthcare Corp. Sec. Litig., No. CV-02-8462-RSWL (Rx) (C.D. Cal. 2002):

Kessler Topaz served as Co-Lead Counsel in this action. A partial settlement, approved on May 26, 2006, was comprised of three distinct elements: (i) a substantial monetary commitment of \$215 million by the company; (ii) personal contributions totaling \$1.5 million by two of the individual defendants; and (iii) the enactment and/or continuation of numerous changes to the company's corporate governance practices, which have led various institutional rating entities to rank Tenet among the best in the U.S. in regards to corporate governance. The significance of the partial settlement was heightened by Tenet's precarious financial condition. Faced with many financial pressures — including several pending civil actions and federal investigations, with total contingent liabilities in the hundreds of millions of dollars — there was real concern that Tenet would be unable to fund a settlement or satisfy a judgment of any greater amount in the near future. By reaching the partial settlement, we were able to avoid the risks associated with a long and costly litigation battle and provide a significant and immediate benefit to the class. Notably, this resolution represented a unique result in securities class action litigation — personal financial contributions from individual defendants. After taking the case through the summary judgment stage, we were able to secure an additional \$65 million recovery from KPMG – Tenet's outside auditor during the relevant period – for the class, bringing the total recovery to \$281.5 million.

In re Wachovia Preferred Securities and Bond/Notes Litigation, Master File No. 09 Civ. 6351 (RJS) (S.D.N.Y.):

Kessler Topaz, as court-appointed Co-Lead Counsel, asserted class action claims for violations of the Securities Act of 1933 on behalf of all persons who purchased Wachovia Corporation ("Wachovia") preferred securities issued in thirty separate offerings (the "Offerings") between July 31, 2006 and May 29, 2008 (the "Offering Period"). Defendants in the action included Wachovia, various Wachovia related trusts, Wells Fargo as successor-in-interest to Wachovia, certain of Wachovia's officer and board members, numerous underwriters that underwrote the Offerings, and KPMG LLP ("KPMG"), Wachovia's former outside auditor. Plaintiffs alleged that the registration statements and prospectuses and prospectus supplements used to market the Offerings to Plaintiffs and other members of the class during the Offerings Period contained materially false and misleading statements and omitted material information. Specifically, the Complaint alleged that in connection with the Offerings, Wachovia: (i) failed to reveal the full extent to which its mortgage portfolio was increasingly impaired due to dangerously lax underwriting practices; (ii) materially misstated the true value of its mortgage-related assets; (iii) failed to disclose that its loan loss reserves were grossly inadequate; and (iv) failed to record write-downs and impairments to those assets as required by Generally Accepted Accounting Principles ("GAAP"). Even as Wachovia faced insolvency, the Offering Materials assured investors that Wachovia's capital and liquidity positions were "strong," and that it was so "well capitalized" that it was actually a "provider of liquidity" to the market. On August 5, 2011, the Parties announced a \$590 million cash settlement with Wells Fargo (as successor-in-interest to Wachovia) and a \$37 million cash settlement with KPMG, to settle all claims asserted against all defendants in the action. This settlement was approved by the Hon. Judge Richard J. Sullivan by order issued on January 3, 2012.

In re Initial Public Offering Sec. Litig., Master File No. 21 MC 92(SAS):

This action settled for \$586 million on January 1, 2010, after years of litigation overseen by U.S. District Judge Shira Scheindlin. Kessler Topaz served on the plaintiffs' executive committee for the case, which was based upon the artificial inflation of stock prices during the dot-com boom of the late 1990s that led to the collapse of the technology stock market in 2000 that was related to allegations of laddering and excess commissions being paid for IPO allocations.

Operative Plasterers and Cement Masons International Association Local 262 Annuity Fund v. Lehman Brothers Holdings, Inc., No. 1:08-cv-05523-LAK (S.D.N.Y.):

Kessler Topaz, on behalf of lead plaintiffs, asserted claims against certain individual defendants and underwriters of Lehman securities arising from misstatements and omissions regarding Lehman's financial condition, and its exposure to the residential and commercial real estate markets in the period leading to Lehman's unprecedented bankruptcy filing on September 14, 2008. In July 2011, the Court sustained the majority of the amended Complaint finding that Lehman's use of Repo 105, while technically complying with GAAP, still rendered numerous statements relating to Lehman's purported Net Leverage Ratio materially false and misleading. The Court also found that Defendants' statements related to Lehman's risk management policies were sufficient to state a claim. With respect to loss causation, the Court also failed to accept Defendants' contention that the financial condition of the economy led to the losses suffered by the Class. As the case was being prepared for trial, a \$517 million settlement was reached on behalf of shareholders --- \$426 million of which came from various underwriters of the Offerings, representing a significant recovery for investors in this now bankrupt entity. In addition, \$90 million

came from Lehman's former directors and officers, which is significant considering the diminishing assets available to pay any future judgment. The settlement was approved by order issued on November 20, 2012. The litigation continues against Lehman's auditor, Ernst & Young, LLP.

Minneapolis Firefighters' Relief Association v. Medtronic, Inc. et al. Case No. 0:08-cv-06324-PAM-AJB (D. Minn.):

Kessler Topaz brought an action on behalf of lead plaintiffs that alleged that the company failed to disclose its reliance on illegal "off-label" marketing techniques to drive the sales of its INFUSE Bone Graft ("INFUSE") medical device. While physicians are allowed to prescribe a drug or medical device for any use they see fit, federal law prohibits medical device manufacturers from marketing devices for any uses not specifically approved by the United States Food and Drug Administration. The company's off-label marketing practices have resulted in the company becoming the target of a probe by the federal government which was revealed on November 18, 2008, when the company's CEO reported that Medtronic received a subpoena from the United States Department of Justice which is "looking into off-label use of INFUSE." After hearing oral argument on Defendants' Motions to Dismiss, on February 3, 2010, the Court issued an order granting in part and denying in part Defendants' motions, allowing a large portion of the action to move forward. The Court held that Plaintiff successfully stated a claim against each Defendant for a majority of the misstatements alleged in the Complaint and that each of the Defendants knew or recklessly disregarded the falsity of these statements and that Defendants' fraud caused the losses experienced by members of the Class when the market learned the truth behind Defendants' INFUSE marketing efforts. While the case was in discovery, on April 2, 2012, Medtronic agreed to pay shareholders an \$85 million settlement. The settlement was approved by the Court by order issued on November 8, 2012.

In re Brocade Sec. Litig., Case No. 3:05-CV-02042 (N.D. Cal. 2005) (CRB):

The complaint in this action alleges that Defendants engaged in repeated violations of federal securities laws by backdating options grants to top executives and falsified the date of stock option grants and other information regarding options grants to numerous employees from 2000 through 2004, which ultimately caused Brocade to restate all of its financial statements from 2000 through 2005. In addition, concurrent SEC civil and Department of Justice criminal actions against certain individual defendants were commenced. In August, 2007 the Court denied Defendant's motions to dismiss and in October, 2007 certified a class of Brocade investors who were damaged by the alleged fraud. Discovery is currently proceeding and the case is being prepared for trial. Furthermore, while litigating the securities class action Kessler Topaz and its co-counsel objected to a proposed settlement in the Brocade derivative action. On March 21, 2007, the parties in *In Re Brocade Communications Systems, Inc. Derivative Litigation*, No. C05-02233 (N.D. Cal. 2005) (CRB) gave notice that they had obtained preliminary approval of their settlement. According to the notice, which was buried on the back pages of the Wall Street Journal, Brocade shareholders were given less than three weeks to evaluate the settlement and file any objection with the Court. Kessler Topaz client Puerto Rico Government Employees' Retirement System ("PRGERS") had a large investment in Brocade and, because the settlement was woefully inadequate, filed an objection. PRGERS, joined by fellow institutional investor Arkansas Public Employees Retirement System, challenged the settlement on two fundamental grounds. First, PRGERS criticized the derivative plaintiffs for failing to conduct any discovery before settling their claims. PRGERS also argued that derivative plaintiff's abject failure to investigate its own claims before providing the defendants with broad releases from liability made it impossible to weigh the merits of the settlement. The Court agreed, and strongly admonished derivative plaintiffs for their failure to perform this most basic act of service to their fellow Brocade shareholders. The settlement was rejected and later withdrawn. Second, and more significantly, PRGERS claimed that the presence of the well-respected law firm Wilson, Sonsini Goodrich and Rosati, in this case, created an incurable conflict of interest that corrupted the entire settlement process. The conflict stemmed from WSGR's dual role as counsel to Brocade and the Individual Settling Defendants, including WSGR Chairman and former Brocade Board Member Larry Sonsini. On this point, the Court also agreed and advised WSGR to remove itself from the case entirely. On May 25, 2007, WSGR complied and withdrew as counsel to Brocade. The case settled for \$160 million and was approved by the Court.

In re Satyam Computer Services, Ltd. Sec. Litig., No. 09 MD 02027 (BSJ) (S.D.N.Y.):

Kessler Topaz served as Co-Lead Counsel in this securities fraud class action in the Southern District of New York. The action asserts claims by lead plaintiffs for violations of the federal securities laws against Satyam Computer Services Limited ("Satyam" or the "Company") and certain of Satyam's former officers and directors and its former auditor PricewaterhouseCoopers International Ltd. ("PwC") relating to the Company's January 7, 2009, disclosure admitting that B. Ramalinga Raju ("B. Raju"), the Company's former chairman, falsified Satyam's financial reports by, among other things, inflating its reported cash balances by more than \$1 billion. The news caused the price of Satyam's common stock (traded on the National Stock Exchange of India and the Bombay Stock Exchange) and

American Depository Shares (“ADSs”) (traded on the New York Stock Exchange (“NYSE”)) to collapse. From a closing price of \$3.67 per share on January 6, 2009, Satyam’s common stock closed at \$0.82 per share on January 7, 2009. With respect to the ADSs, the news of B. Raju’s letter was revealed overnight in the United States and, as a result, trading in Satyam ADSs was halted on the NYSE before the markets opened on January 7, 2009. When trading in Satyam ADSs resumed on January 12, 2009, Satyam ADSs opened at \$1.14 per ADS, down steeply from a closing price of \$9.35 on January 6, 2009. Lead Plaintiffs filed a consolidated complaint on July 17, 2009, on behalf of all persons or entities, who (a) purchased or otherwise acquired Satyam’s ADSs in the United States; and (b) residents of the United States who purchased or otherwise acquired Satyam shares on the National Stock Exchange of India or the Bombay Stock Exchange between January 6, 2004 and January 6, 2009. Co-Lead Counsel secured a settlement for \$125 million from Satyam on February 16, 2011. Additionally, Co-Lead Counsel was able to secure a \$25.5 million settlement from PwC on April 29, 2011, who was alleged to have signed off on the misleading audit reports.

In re BankAtlantic Bancorp, Inc. Sec. Litig., Case No. 07-CV-61542 (S.D. Fla. 2007):

On November 18, 2010, a panel of nine Miami, Florida jurors returned the first securities fraud verdict to arise out of the financial crisis against BankAtlantic Bancorp. Inc., its chief executive officer and chief financial officer. This case was only the tenth securities class action to be tried to a verdict following the passage of the Private Securities Litigation Reform Act of 1995, which governs such suits. Following extensive post-trial motion practice, the District Court upheld all of the Jury’s findings of fraud but vacated the damages award on a narrow legal issue and granted Defendant’s motion for a judgment as a matter of law. Plaintiffs appealed to the U.S. Court of Appeals for the Eleventh Circuit. On July 23, 2012, a three-judge panel for the Appeals Court found the District Court erred in granting the Defendant’s motion for a judgment as a matter of law based in part on the Jury’s findings (perceived inconsistency of two of the Jury’s answers to the special interrogatories) instead of focusing solely on the sufficiency of the evidence. However, upon its review of the record, the Appeals Court affirmed the District Court’s decision as it determined the Plaintiffs did not introduce evidence sufficient to support a finding in its favor on the element of loss causation. The Appeals Court’s decision in this case does not diminish the five years of hard work which Kessler Topaz expended to bring the matter to trial and secure an initial jury verdict in the Plaintiffs’ favor. This case is an excellent example of the Firm’s dedication to our clients and the lengths it will go to try to achieve the best possible results for institutional investors in shareholder litigation.

In re AremisSoft Corp. Sec. Litig., C.A. No. 01-CV-2486 (D.N.J. 2002):

Kessler Topaz is particularly proud of the results achieved in this case before the Honorable Joel A. Pisano. This case was exceedingly complicated, as it involved the embezzlement of hundreds of millions of dollars by former officers of the Company, one of whom remains a fugitive. In settling the action, Kessler Topaz, as sole Lead Counsel, assisted in reorganizing AremisSoft as a new company to allow for it to continue operations, while successfully separating out the securities fraud claims and the bankrupt Company’s claims into a litigation trust. The approved Settlement enabled the class to receive the majority of the equity in the new Company, as well as their pro rata share of any amounts recovered by the litigation trust. During this litigation, actions have been initiated in the Isle of Man, Cyprus, as well as in the United States as we continue our efforts to recover assets stolen by corporate insiders and related entities.

In re CVS Corporation Sec. Litig., C.A. No. 01-11464 JLT (D.Mass. 2001):

Kessler Topaz, serving as Co-Lead Counsel on behalf of a group of institutional investors, secured a cash recovery of \$110 million for the class, a figure which represents the third-largest payout for a securities action in Boston federal court. Kessler Topaz successfully litigated the case through summary judgment before ultimately achieving this outstanding result for the class following several mediation sessions, and just prior to the commencement of trial.

In re Marvell Technology, Group, Ltd. Sec. Lit., Master File No. 06-06286 RWM:

Kessler Topaz served as Co-Lead Counsel in this securities class action brought against Marvell Technology Group Ltd. (“Marvell”) and three of Marvell’s executive officers. This case centered around an alleged options backdating scheme carried out by Defendants from June 2000 through June 2006, which enabled Marvell’s executives and employees to receive options with favorable option exercise prices chosen with the benefit of hindsight, in direct violation of Marvell’s stock option plan, as well as to avoid recording hundreds of millions of dollars in compensation expenses on the Marvell’s books. In total, the restatement conceded that Marvell had understated the cumulative effect of its compensation expense by \$327.3 million, and overstated net income by \$309.4 million, for the period covered by the restatement. Following nearly three years of investigation and prosecution of the Class’

claims as well as a protracted and contentious mediation process, Co-Lead Counsel secured a settlement for \$72 million from defendants on June 9, 2009. This Settlement represents a substantial portion of the Class' maximum provable damages, and is among the largest settlements, in total dollar amount, reached in an option backdating securities class action.

In re Delphi Corp. Sec. Litig., Master File No. 1:05-MD-1725 (E.D. Mich. 2005):

In early 2005, various securities class actions were filed against auto-parts manufacturer Delphi Corporation in the Southern District of New York. Kessler Topaz its client, Austria-based mutual fund manager Raiffeisen Kapitalanlage-Gesellschaft m.b.H. ("Raiffeisen"), were appointed as Co-Lead Counsel and Co-Lead Plaintiff, respectively. The Lead Plaintiffs alleged that (i) Delphi improperly treated financing transactions involving inventory as sales and disposition of inventory; (ii) improperly treated financing transactions involving "indirect materials" as sales of these materials; and (iii) improperly accounted for payments made to and credits received from General Motors as warranty settlements and obligations. As a result, Delphi's reported revenue, net income and financial results were materially overstated, prompting Delphi to restate its earnings for the five previous years. Complex litigation involving difficult bankruptcy issues has potentially resulted in an excellent recovery for the class. In addition, Co-Lead Plaintiffs also reached a settlement of claims against Delphi's outside auditor, Deloitte & Touche, LLP, for \$38.25 million on behalf of Delphi investors.

In re Royal Dutch Shell European Shareholder Litigation, No. 106.010.887, Gerechtshof Te Amsterdam (Amsterdam Court of Appeal):

Kessler Topaz was instrumental in achieving a landmark \$352 million settlement on behalf non-US investors with Royal Dutch Shell plc relating to Shell's 2004 restatement of oil reserves. This settlement of securities fraud claims on a class-wide basis under Dutch law was the first of its kind, and sought to resolve claims exclusively on behalf of European and other non-United States investors. Uncertainty over whether jurisdiction for non-United States investors existed in a 2004 class action filed in federal court in New Jersey prompted a significant number of prominent European institutional investors from nine countries, representing more than one billion shares of Shell, to actively pursue a potential resolution of their claims outside the United States. Among the European investors which actively sought and supported this settlement were Alecta pensionsförsäkring, ömsesidigt, PKA Pension Funds Administration Ltd., Swedbank Robur Fonder AB, AP7 and AFA Insurance, all of which were represented by Kessler Topaz.

In re Computer Associates Sec. Litig., No. 02-CV-1226 (E.D.N.Y. 2002):

Kessler Topaz served as Co-Lead Counsel on behalf of plaintiffs, alleging that Computer Associates and certain of its officers misrepresented the health of the company's business, materially overstated the company's revenues, and engaged in illegal insider selling. After nearly two years of litigation, Kessler Topaz helped obtain a settlement of \$150 million in cash and stock from the company.

In re The Interpublic Group of Companies Sec. Litig., No. 02 Civ. 6527 (S.D.N.Y. 2002):

Kessler Topaz served as sole Lead Counsel in this action on behalf of an institutional investor and received final approval of a settlement consisting of \$20 million in cash and 6,551,725 shares of IPG common stock. As of the final hearing in the case, the stock had an approximate value of \$87 million, resulting in a total settlement value of approximately \$107 million. In granting its approval, the Court praised Kessler Topaz for acting responsibly and noted the Firm's professionalism, competence and contribution to achieving such a favorable result.

In re Digital Lightwave, Inc. Sec. Litig., Consolidated Case No. 98-152-CIV-T-24E (M.D. Fla. 1999):

The firm served as Co-Lead Counsel in one of the nation's most successful securities class actions in history measured by the percentage of damages recovered. After extensive litigation and negotiations, a settlement consisting primarily of stock was worth over \$170 million at the time when it was distributed to the Class. Kessler Topaz took on the primary role in negotiating the terms of the equity component, insisting that the class have the right to share in any upward appreciation in the value of the stock after the settlement was reached. This recovery represented an astounding approximately two hundred percent (200%) of class members' losses.

In re Transkaryotic Therapies, Inc. Sec. Litig., Civil Action No.: 03-10165-RWZ (D. Mass. 2003):

After five years of hard-fought, contentious litigation, Kessler Topaz as Lead Counsel on behalf of the Class, entered into one of largest settlements ever against a biotech company with regard to non-approval of one of its

drugs by the U.S. Food and Drug Administration (“FDA”). Specifically, the Plaintiffs alleged that Transkaryotic Therapies, Inc. (“TKT”) and its CEO, Richard Selden, engaged in a fraudulent scheme to artificially inflate the price of TKT common stock and to deceive Class Members by making misrepresentations and nondisclosures of material facts concerning TKT’s prospects for FDA approval of Replagal, TKT’s experimental enzyme replacement therapy for Fabry disease. With the assistance of the Honorable Daniel Weinstein, a retired state court judge from California, Kessler Topaz secured a \$50 million settlement from the Defendants during a complex and arduous mediation.

In re PNC Financial Services Group, Inc. Sec. Litig., Case No. 02-CV-271 (W.D. Pa. 2002):

Kessler Topaz served as Co-Lead Counsel in a securities class action case brought against PNC bank, certain of its officers and directors, and its outside auditor, Ernst & Young, LLP (“E&Y”), relating to the conduct of Defendants in establishing, accounting for and making disclosures concerning three special purpose entities (“SPEs”) in the second, third and fourth quarters of PNC’s 2001 fiscal year. Plaintiffs alleged that these entities were created by Defendants for the sole purpose of allowing PNC to secretly transfer hundreds of millions of dollars worth of non-performing assets from its own books to the books of the SPEs without disclosing the transfers or consolidating the results and then making positive announcements to the public concerning the bank’s performance with respect to its non-performing assets. Complex issues were presented with respect to all defendants, but particularly E&Y. Throughout the litigation E&Y contended that because it did not make any false and misleading statements itself, the Supreme Court’s opinion in *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1993) foreclosed securities liability for “aiding or abetting” securities fraud for purposes of Section 10(b) liability. Plaintiffs, in addition to contending that E&Y did make false statements, argued that Rule 10b-5’s deceptive conduct prong stood on its own as an independent means of committing fraud and that so long as E&Y itself committed a deceptive act, it could be found liable under the securities laws for fraud. After several years of litigation and negotiations, PNC paid \$30 million to settle the action, while also assigning any claims it may have had against E&Y and certain other entities that were involved in establishing and/or reporting on the SPEs. Armed with these claims, class counsel was able to secure an additional \$6.6 million in settlement funds for the class from two law firms and a third party insurance company and \$9.075 million from E&Y. Class counsel was also able to negotiate with the U.S. government, which had previously obtained a disgorgement fund of \$90 million from PNC and \$46 million from the third party insurance carrier, to combine all funds into a single settlement fund that exceeded \$180 million and is currently in the process of being distributed to the entire class, with PNC paying all costs of notifying the Class of the settlement.

In re SemGroup Energy Partners, L.P., Sec. Litig., No. 08-md-1989 (DC) (N.D. Okla.)

Kessler Topaz, which was appointed by the Court as sole Lead Counsel, litigated this matter, which ultimately settled for \$28 million. The defense was led by 17 of the largest and best capitalized defense law firms in the world. On April 20, 2010, in a fifty-page published opinion, the United States District Court for the Northern District of Oklahoma largely denied defendants’ ten separate motions to dismiss Lead Plaintiff’s Consolidated Amended Complaint. The Complaint alleged that: (i) defendants concealed SemGroup’s risky trading operations that eventually caused SemGroup to declare bankruptcy; and (ii) defendants made numerous false statements concerning SemGroup’s ability to provide its publicly-traded Master Limited Partnership stable cash-flows. The case was aggressively litigated out of the Firm’s San Francisco and Radnor offices and the significant recovery was obtained, not only from the Company’s principals, but also from its underwriters and outside directors.

In re Liberate Technologies Sec. Litig., No. C-02-5017 (MJJ) (N.D. Cal. 2005):

Kessler Topaz represented plaintiffs which alleged that Liberate engaged in fraudulent revenue recognition practices to artificially inflate the price of its stock, ultimately forcing it to restate its earnings. As sole Lead Counsel, Kessler Topaz successfully negotiated a \$13.8 million settlement, which represents almost 40% of the damages suffered by the class. In approving the settlement, the district court complimented Lead Counsel for its “extremely credible and competent job.”

In re Riverstone Networks, Inc. Sec. Litig., Case No. CV-02-3581 (N.D. Cal. 2002):

Kessler Topaz served as Lead Counsel on behalf of plaintiffs alleging that Riverstone and certain of its officers and directors sought to create the impression that the Company, despite the industry-wide downturn in the telecom sector, had the ability to prosper and succeed and was actually prospering. In that regard, plaintiffs alleged that defendants issued a series of false and misleading statements concerning the Company’s financial condition, sales and prospects, and used inside information to personally profit. After extensive litigation, the parties entered into

formal mediation with the Honorable Charles Legge (Ret.). Following five months of extensive mediation, the parties reached a settlement of \$18.5 million.

Shareholder Derivative Actions

In re Southern Peru Copper Corp. Derivative Litigation, Consol. CA No. 961-CS (Del. Ch.):

On October 14, 2011, Kessler Topaz and its Delaware co-counsel secured the largest damage award in Delaware Chancery Court history, a \$1.3 billion derivative judgment against copper mining company Southern Peru's majority shareholder Grupo Mexico. The litigation stemmed from Southern Peru's 2005 acquisition of Minera Mexico, a private mining company owned by Grupo Mexico, for more than \$3 billion in Southern Peru stock. Plaintiff alleged that the private company was worth more than a billion dollars less, but that Southern Peru's board had approved this conflicted transaction in deference to its majority shareholder's interests. In his trial opinion, Chancellor Leo Strine agreed, writing that Grupo Mexico "extracted a deal that was far better than market, and got real, market-tested value of over \$3 billion for something that no member of the special committee, none of its advisors, and no trial expert was willing to say was worth that amount of actual cash." He concluded that Southern Peru's "non-adroit act of commercial charity toward the controller resulted in a manifestly unfair transaction." Discovery in the case spanned years and continents, with depositions in Peru and Mexico. Defendants appealed the historic verdict to the Delaware Supreme Court, which affirmed the Court of Chancery's judgment on August 27, 2012. The final judgment, with interest, amounted to \$2.1 billion.

In re Comverse Technology, Inc. Derivative Litigation, 601272/2006 (Supreme Court, NY 2006):

Kessler Topaz attorneys negotiated a settlement that required the Company's founder/Chairman/CEO and other executives to disgorge more than \$62 million in ill-gotten gains from backdated stock options back to the Company and overhauled the Company's corporate governance and internal controls, including replacing a number of members on the board of directors and corporate executives, splitting the Chairman and CEO positions, and instituting majority voting for directors.

Wanstrath v. Doctor R. Crants, et. al. Shareholders Litigation, No. 99-1719-111 (Tenn. Chan. Ct., 20th Judicial District, 1999):

Kessler Topaz served as Lead Counsel in a derivative action filed against the officers and directors of Prison Realty Trust, Inc., challenging the transfer of assets from the Company to a private entity owned by several of the Company's top insiders. Numerous federal securities class actions were pending against the Company at this time. Through the derivative litigation, the Company's top management was ousted, the composition of the Board of Directors was significantly improved, and important corporate governance provisions were put in place to prevent future abuse. Kessler Topaz, in addition to achieving these desirable results, was able to effectuate a global settlement of all pending litigation against the backdrop of an almost certain bankruptcy. The case was resolved in conjunction with the federal securities cases for the payment of approximately \$50 million by the Company's insurers and the issuance of over 46 million shares to the class members.

In re Viacom, Inc. Shareholder Derivative Litig., Index No. 602527/05 (New York County, NY 2005):

Kessler Topaz represented the Public Employees' Retirement System of Mississippi and served as Lead Counsel in a derivative action alleging that the members of the Board of Directors of Viacom, Inc. paid excessive and unwarranted compensation to Viacom's Executive Chairman and CEO, Sumner M. Redstone, and co-COOs Thomas E. Freston and Leslie Moonves, in breach of their fiduciary duties. Specifically, we alleged that in fiscal year 2004, when Viacom reported a record net loss of \$17.46 billion, the board improperly approved compensation payments to Redstone, Freston, and Moonves of approximately \$56 million, \$52 million, and \$52 million, respectively. Judge Ramos of the New York Supreme Court denied Defendants' motion to dismiss the action as we overcame several complex arguments related to the failure to make a demand on Viacom's Board; Defendants then appealed that decision to the Appellate Division of the Supreme Court of New York. Prior to a decision by the appellate court, a settlement was reached in early 2007. Pursuant to the settlement, Sumner Redstone, the company's Executive Chairman and controlling shareholder, agreed to a new compensation package that, among other things, substantially reduces his annual salary and cash bonus, and ties the majority of his incentive compensation directly to shareholder returns.

In re Family Dollar Stores, Inc. Derivative Litig., Master File No. 06-CVS-16796 (Mecklenburg County, NC 2006):

Kessler Topaz served as Lead Counsel, derivatively on behalf of Family Dollar Stores, Inc., and against certain of Family Dollar's current and former officers and directors. The actions were pending in Mecklenburg County Superior Court, Charlotte, North Carolina, and alleged that certain of the company's officers and directors had improperly backdated stock options to achieve favorable exercise prices in violation of shareholder-approved stock option plans. As a result of these shareholder derivative actions, Kessler Topaz was able to achieve substantial relief for Family Dollar and its shareholders. Through Kessler Topaz's litigation of this action, Family Dollar agreed to cancel hundreds of thousands of stock options granted to certain current and former officers, resulting in a seven-figure net financial benefit for the company. In addition, Family Dollar has agreed to, among other things: implement internal controls and granting procedures that are designed to ensure that all stock options are properly dated and accounted for; appoint two new independent directors to the board of directors; maintain a board composition of at least 75 percent independent directors; and adopt stringent officer stock-ownership policies to further align the interests of officers with those of Family Dollar shareholders. The settlement was approved by Order of the Court on August 13, 2007.

In re Barnes & Noble, Inc. Derivative Litig., Index No. 06602389 (New York County, NY 2006):

Kessler Topaz served as Lead Counsel, derivatively on behalf of Barnes & Noble, Inc., and against certain of Barnes & Noble's current and former officers and directors. This action was pending in the Supreme Court of New York, and alleged that certain of the company's officers and directors had improperly backdated stock options to achieve favorable exercise prices in violation of shareholder-approved stock option plans. As a result of this shareholder derivative action, Kessler Topaz was able to achieve substantial relief for Barnes & Noble and its shareholders. Through Kessler Topaz's litigation of this action, Barnes & Noble agreed to re-price approximately \$2.64 million unexercised stock options that were alleged improperly granted, and certain defendants agreed to voluntarily repay approximately \$1.98 million to the Company for the proceeds they received through exercise of alleged improperly priced stock options. Furthermore, Barnes & Noble has agreed to, among other things: adopt internal controls and granting procedures that are designed to ensure that all stock options are properly dated and accounted for; at least once per calendar year, preset a schedule of dates on which stock options will be granted to new employees or to groups of twenty (20) or more employees; make final determinations regarding stock options at duly-convened committee meetings; and designate one or more specific officer(s) within the Company who will be responsible for, among other things, compliance with the Company's stock option plans. The settlement was approved by Order of the Court on November 14, 2007.

In re Sepracor, Inc. Derivative Litig., C.A. NO.: SUCV2006-04057-BLS:

Kessler Topaz served as Lead Counsel, derivatively on behalf of Sepracor Inc., and against certain of Sepracor's current and former officers and directors. This action was pending in the Superior Court of Suffolk County, Massachusetts, and alleged that certain of the company's officers and directors had improperly backdated stock options to achieve favorable exercise prices in violation of shareholder-approved stock option plans. As a result of this shareholder derivative action, Kessler Topaz was able to achieve substantial relief for Sepracor and its shareholders. Through Kessler Topaz's litigation of this action, Sepracor agreed to cancel or reprice more than 2.7 million unexercised stock options that were alleged to have been improperly granted. Furthermore, Sepracor has agreed to, among other things: adopt internal controls and granting procedures that are designed to ensure that all stock options are properly dated and accounted for; not alter the exercise prices of stock options without shareholder approval; hire an employee responsible for ensuring that the Company's complies with its stock option plans; and appoint a director of internal auditing. The settlement was approved by Order of the Court on January 4, 2008.

In re Monster Worldwide, Inc. Stock Option Derivative Litigation, Index No. 1:06-CV-04622 (New York Supreme Court, New York County):

Kessler Topaz represented Allegheny County in this shareholder derivative action brought on behalf of Monster Worldwide, Inc. ("Monster") against certain of its officers and directors. The action alleged that insiders had breached their fiduciary duties to the company and its shareholders by "backdating" stock options, that is, by granting stock options at artificially low prices by pretending that the options had been granted on earlier, fictitious dates. Kessler Topaz attorneys negotiated a settlement which required the recipients of backdated stock options to disgorge more than \$32 million in unlawful gains back to the company, plus agreeing to significant corporate governance measures. These measures included (a) requiring Monster's founder Andrew McKelvey to reduce his voting control over Monster from 31% to 7%, by exchanging super-voting stock for common stock; and (b)

implementing new equity granting practices that require greater accountability and transparency in the granting of stock options moving forward. In approving the settlement, the court noted “the good results, mainly the amount of money for the shareholders and also the change in governance of the company itself, and really the hard work that had to go into that to achieve the results....”

Denbury Resources, Inc. Shareholder Litigation, 2008-CP-23-8395 (Greenville County, SC 2008):

This derivative litigation challenged the Board’s decision to award excessive compensation to the Company’s outgoing President and CEO, Gareth Roberts. Kessler Topaz negotiated a settlement that included both the disgorgement of ill-gotten compensation by Mr. Roberts as well as numerous corporate governance improvements. In approving the settlement, the Court acknowledged that the litigation was a “hard-fought battle all the way through,” and commented, “I know you guys have very vigorous and able counsel on the other side, and you had to basically try to knock your way through the wall at every stage.”

Carbon County Employees Retirement System, et al., Derivatively on Behalf of Nominal Defendant Southwest Airlines Co. v. Gary C. Kelly, et al. Cause No. 08-08692 (District Court of Dallas County, Texas)

Kessler Topaz served as Lead Counsel against certain officers and directors of Southwest Airlines Co. alleging breaches of fiduciary duties in connection with Southwest’s violations of Federal Aviation Administration safety and maintenance regulations. Plaintiffs alleged that from June 2006 to March 2007, Southwest flew 46 Boeing 737 airplanes on nearly 60,000 flights without complying with a 2004 FAA Airworthiness Directive that required the Company to inspect the planes for fuselage fatigue cracks. As a result, Southwest was forced to temporarily ground 44 planes, and the FAA levied on the Company a record \$7.5 million civil penalty. Plaintiffs successfully negotiated numerous reforms targeted not only at ensuring that Southwest’s Board is adequately apprised of any issues concerning Southwest’s safety and operations, but also at implementing significant measures to strengthen Southwest’s safety and maintenance processes and procedures, which will yield positive changes in many areas of Southwest’s operations and will have long-lasting effects on Southwest that go far beyond its Board-level practices.

The South Financial Group, Inc. Shareholder Litigation, 09-09061 (Dallas County, TX 2009):

This derivative litigation challenged the Board’s decision to accelerate “golden parachute” payments to the Company’s CEO Mack Whittle as the Company applied for emergency assistance in 2008 under the Troubled Asset Recovery Plan (“TARP”). Kessler Topaz attorneys sought injunctive relief to block the payments and protect the Company’s ability to receive the TARP funds. The litigation was settled, with Whittle giving up a portion of his severance package and agreeing to leave the board, as well as the implementation of important corporate governance changes which were described by one commentator as “unprecedented.”

Mergers & Acquisitions Litigation

In re Genentech, Inc. Shareholders Lit., Cons. Civ. Action No. 3991-VCS (Del. Chancery Court):

Kessler Topaz served as Co-Lead Counsel in this shareholder class action brought against the directors of Genentech and Genentech’s former majority owner, Roche Holdings, Inc., in response to Roche’s July 21, 2008 attempt to acquire Genentech for \$89 per share. We sought to enforce provisions of an Affiliation Agreement between Roche and Genentech and to ensure that Roche fulfilled its fiduciary obligations to Genentech’s shareholders through any buyout effort by Roche. After moving to enjoin the tender offer, Kessler Topaz negotiated with Roche and Genentech to amend the Affiliation Agreement to allow a negotiated transaction between Roche and Genentech, which enabled Roche to acquire Genentech for \$95 per share, approximately \$3.9 billion more than Roche offered in its hostile tender offer. In approving the settlement, Vice Chancellor Leo Strine complimented plaintiffs’ counsel, noting that this benefit was only achieved through “real hard-fought litigation in a complicated setting.”

In re GSI Commerce, Inc. Shareholder Litigation, Consolidated C.A. No. 6346-VCN (Del. Ch. Ct.):

Kessler Topaz represented Lead Plaintiff Erie County Employees Retirement System (“Erie County”) in this consolidated class action matter involving the acquisition of GSI Commerce, Inc. (“GSI”) by eBay, Inc., litigated in the Delaware Court of Chancery. Erie County’s complaint alleged, among other things, that GSI’s founder, chairman of the board and chief executive officer Michael Rubin breached his fiduciary duties to GSI and its stockholders by secretly negotiating with eBay to acquire several of GSI’s businesses as a part of a merger with eBay, before the GSI board considered a possible merger with eBay, thereby reducing the price that eBay would pay to GSI’s stockholders in the merger. The complaint also alleged that GSI’s board breached its fiduciary duties to stockholders by allowing Rubin to acquire the GSI-owned businesses and by failing to make full material disclosure

to stockholders in advance of a stockholder vote on the merger. Following expedited discovery and GSI's release of additional factual disclosures less than a week before a scheduled hearing on Erie County's motion to enjoin the transaction, Erie County agreed to settle the action in exchange for a payment of approximately \$23.7 million to GSI stockholders, as well as an agreement to pay attorneys' fees and expenses on top of that sum, without reducing the payment to stockholders. GSI stockholders received the settlement payment in June 2011, upon the closing of the eBay merger.

In re Amicas, Inc. Shareholder Litigation, 10-0174-BLS2 (Suffolk County, MA 2010):

Kessler Topaz served as lead counsel in class action litigation challenging a proposed private equity buy out of Amicas that would have paid Amicas shareholders \$5.35 per share in cash while certain Amicas executives retained an equity stake in the surviving entity moving forward. Kessler Topaz prevailed in securing a preliminary injunction against the deal, which then allowed a superior bidder to purchase the Company for an additional \$0.70 per share. The court complimented Kessler Topaz attorneys for causing an "exceptionally favorable result for Amicas' shareholders" after "expend[ing] substantial resources."

In re American Italian Pasta Company Shareholder Litigation, CA 5610-VCN (Del. Ch 2010):

This expedited merger litigation challenged certain provisions of a merger agreement, whereby the board had granted the acquiring company a "Top-Up Option" to purchase additional shares in the event that less than 90% of the shares were tendered. Kessler Topaz attorneys asserted that the Top-Up Option was granted in violation of Delaware law and threatened the rights of shareholders to seek appraisal post-closing. In settling the litigation, the parties agreed to substantially rewrite provisions of the merger agreement and issue substantial additional disclosures prior to the closing of the transaction. The Delaware Chancery Court approved the settlement, noting that "the issues were novel and difficult," and that the "litigation was brought under severe time constraints."

Consumer Protection and ERISA Litigation

CompSource Oklahoma v. BNY Mellon Bank, N.A., No. CIV 08-469-KEW (E.D. Okla. October 25, 2012):

Kessler Topaz served as Interim Class Counsel in this matter alleging that BNY Mellon Bank, N.A. and the Bank of New York Mellon (collectively, "BNYM") breached their statutory, common law and contractual duties in connection with the administration of their securities lending program. The Second Amended Complaint alleged, among other things, that BNYM imprudently invested cash collateral obtained under its securities lending program in medium term notes issued by Sigma Finance, Inc. -- a foreign structured investment vehicle ("SIV") that is now in receivership -- and that such conduct constituted a breach of BNYM's fiduciary obligations under the Employee Retirement Income Security Act of 1974, a breach of its fiduciary duties under common law, and a breach of its contractual obligations under the securities lending agreements. The Complaint also asserted claims for negligence, gross negligence and willful misconduct. The case recently settled for \$280 million.

Transatlantic Holdings, Inc., et al. v. American International Group, Inc., et al., American Arbitration Association Case No. 50 148 T 00376 10:

Kessler Topaz served as counsel for Transatlantic Holdings, Inc., and its subsidiaries ("TRH"), alleging that American International Group, Inc. and its subsidiaries ("AIG") breached their fiduciary duties, contractual duties, and committed fraud in connection with the administration of its securities lending program. Until June 2009, AIG was TRH's majority shareholder and, at the same time, administered TRH's securities lending program. TRH's Statement of Claim alleged that, among other things, AIG breached its fiduciary obligations as investment advisor and majority shareholder by imprudently investing the majority of the cash collateral obtained under its securities lending program in mortgage backed securities, including Alt-A and subprime investments. The Statement of Claim further alleged that AIG concealed the extent of TRH's subprime exposure and that when the collateral pools began experiencing liquidity problems in 2007, AIG unilaterally carved TRH out of the pools so that it could provide funding to its wholly owned subsidiaries to the exclusion of TRH. The matter was litigated through a binding arbitration and TRH was awarded \$75 million.

Board of Trustees of the AFTRA Retirement Fund v. JPMorgan Chase Bank, N.A. – Consolidated Action No. 09-cv-00686 (SAS) (S.D.N.Y.):

On January 23, 2009, the firm filed a class action complaint on behalf of all entities that were participants in JPMorgan's securities lending program and that incurred losses on investments that JPMorgan, acting in its capacity

as a discretionary investment manager, made in medium-term notes issue by Sigma Finance, Inc. – a now defunct structured investment vehicle. The losses of the Class exceeded \$500 million. The complaint asserted claims for breach of fiduciary duty under the Employee Retirement Income Security Act (ERISA), as well as common law breach of fiduciary duty, breach of contract and negligence. Over the course of discovery, the parties produced and reviewed over 500,000 pages of documents, took 40 depositions (domestic and foreign) and exchanged 21 expert reports. The case settled for \$150 million. Trial was scheduled to commence on February 6, 2012.

In re Global Crossing, Ltd. ERISA Litigation, No. 02 Civ. 7453 (S.D.N.Y. 2004):

Kessler Topaz served as Co-Lead Counsel in this novel, complex and high-profile action which alleged that certain directors and officers of Global Crossing, a former high-flier of the late 1990's tech stock boom, breached their fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA") to certain company-provided 401(k) plans and their participants. These breaches arose from the plans' alleged imprudent investment in Global Crossing stock during a time when defendants knew, or should have known, that the company was facing imminent bankruptcy. A settlement of plaintiffs' claims restoring \$79 million to the plans and their participants was approved in November 2004. At the time, this represented the largest recovery received in a company stock ERISA class action.

In re AOL Time Warner ERISA Litigation, No. 02-CV-8853 (S.D.N.Y. 2006):

Kessler Topaz, which served as Co-Lead Counsel in this highly-publicized ERISA fiduciary breach class action brought on behalf of the Company's 401(k) plans and their participants, achieved a record \$100 million settlement with defendants. The \$100 million restorative cash payment to the plans (and, concomitantly, their participants) represents the largest recovery from a single defendant in a breach of fiduciary action relating to mismanagement of plan assets held in the form of employer securities. The action asserted claims for breach of fiduciary duties pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA") on behalf of the participants in the AOL Time Warner Savings Plan, the AOL Time Warner Thrift Plan, and the Time Warner Cable Savings Plan (collectively, the "Plans") whose accounts purchased and/or held interests in the AOLTW Stock Fund at any time between January 27, 1999 and July 3, 2003. Named as defendants in the case were Time Warner (and its corporate predecessor, AOL Time Warner), several of the Plans' committees, as well as certain current and former officers and directors of the company. In March 2005, the Court largely denied defendants' motion to dismiss and the parties began the discovery phase of the case. In January 2006, Plaintiffs filed a motion for class certification, while at the same time defendants moved for partial summary judgment. These motions were pending before the Court when the settlement in principle was reached. Notably, an Independent Fiduciary retained by the Plans to review the settlement in accordance with Department of Labor regulations approved the settlement and filed a report with Court noting that the settlement, in addition to being "more than a reasonable recovery" for the Plans, is "one of the largest ERISA employer stock action settlements in history."

In re Honeywell International ERISA Litigation, No. 03-1214 (DRD) (D.N.J. 2004):

Kessler Topaz served as Lead Counsel in a breach of fiduciary duty case under ERISA against Honeywell International, Inc. and certain fiduciaries of Honeywell defined contribution pension plans. The suit alleged that Honeywell and the individual fiduciary defendants, allowed Honeywell's 401(k) plans and their participants to imprudently invest significant assets in company stock, despite that defendants knew, or should have known, that Honeywell's stock was an imprudent investment due to undisclosed, wide-ranging problems stemming from a consummated merger with Allied Signal and a failed merger with General Electric. The settlement of plaintiffs' claims included a \$14 million payment to the plans and their affected participants, and significant structural relief affording participants much greater leeway in diversifying their retirement savings portfolios.

Henry v. Sears, et. al., Case No. 98 C 4110 (N.D. Ill. 1999):

The Firm served as Co-Lead Counsel for one of the largest consumer class actions in history, consisting of approximately 11 million Sears credit card holders whose interest rates were improperly increased in connection with the transfer of the credit card accounts to a national bank. Kessler Topaz successfully negotiated a settlement representing approximately 66% of all class members' damages, thereby providing a total benefit exceeding \$156 million. All \$156 million was distributed automatically to the Class members, without the filing of a single proof of claim form. In approving the settlement, the District Court stated: ". . . I am pleased to approve the settlement. I think it does the best that could be done under the circumstances on behalf of the class. . . . The litigation was complex in both liability and damages and required both professional skill and standing which class counsel demonstrated in abundance."

Antitrust Litigation

In re Remeron Antitrust Litigation, No. 02-CV-2007 (D.N.J. 2004):

Kessler Topaz was Co-Lead Counsel in an action which challenged Organon, Inc.'s filing of certain patents and patent infringement lawsuits as an abuse of the Hatch-Waxman Act, and an effort to unlawfully extend their monopoly in the market for Remeron. Specifically, the lawsuit alleged that defendants violated state and federal antitrust laws in their efforts to keep competing products from entering the market, and sought damages sustained by consumers and third-party payors. After lengthy litigation, including numerous motions and over 50 depositions, the matter settled for \$36 million.

OUR PROFESSIONALS

PARTNERS

NAUMON A. AMJED, a partner of the Firm, has significant experience conducting complex litigation in state and federal courts including federal securities class actions, shareholder derivative actions, suits by third-party insurers and other actions concerning corporate and alternative business entity disputes. Mr. Amjed has litigated in numerous state and federal courts across the country, including the Delaware Court of Chancery, and has represented shareholders in several high profile lawsuits, including: *LAMPERS v. CBOT Holdings, Inc. et al.*, C.A. No. 2803-VCN (Del. Ch.); *In re Alstom SA Sec. Litig.*, 454 F. Supp. 2d 187 (S.D.N.Y. 2006); *In re Global Crossing Sec. Litig.*, 02— Civ. — 910 (S.D.N.Y.); *In re Enron Corp. Sec. Litig.*, 465 F. Supp. 2d 687 (S.D. Tex. 2006); and *In re Marsh McLennan Cos., Inc. Sec. Litig.* 501 F. Supp. 2d 452 (S.D.N.Y. 2006).

Prior to joining the Firm, Mr. Amjed was associated with the Wilmington, Delaware law firm of Grant & Eisenhofer, P.A. Mr. Amjed is a graduate of the Villanova University School of Law, *cum laude*, and holds an undergraduate degree in business administration from Temple University, *cum laude*. Mr. Amjed is a member of the Delaware State Bar, the Bar of the Commonwealth of Pennsylvania and is admitted to practice before the United States Court for the District of Delaware.

STUART L. BERMAN, a partner of the Firm, concentrates his practice on securities class action litigation in federal courts throughout the country, with a particular emphasis on representing institutional investors active in litigation. Mr. Berman regularly counsels and educates institutional investors located around the world on emerging legal trends, new case ideas and the rights and obligations of institutional investors as they relate to securities fraud class actions and individual actions. In this respect, Mr. Berman has been instrumental in courts appointing the Firm's institutional clients as lead plaintiffs in class actions as well as in representing institutions individually in direct actions. Mr. Berman is currently representing institutional investors in direct actions against Vivendi and Merck, and took a very active role in the precedent setting Shell settlement on behalf of many of the Firm's European institutional clients.

In connection with these responsibilities, Mr. Berman is a frequent speaker on securities issues, especially as they relate to institutional investors, at events such as The European Pension Symposium in Florence, Italy; the Public Funds Symposium in Washington, D.C.; the Pennsylvania Public Employees Retirement (PAPERS) Summit in Harrisburg, Pennsylvania; the New England Pension Summit in Newport, Rhode Island; the Rights and Responsibilities for Institutional Investors in Amsterdam, Netherlands; and the European Investment Roundtable in Barcelona, Spain.

Mr. Berman is an honors graduate from Brandeis University and received his law degree from George Washington University National Law Center.

MICHAEL J. BONELLA, a partner of the Firm, concentrates his practice on intellectual property litigation and particularly complex patent litigation. He earned his law degree *magna cum laude* from the Duke University School of Law. Michael is one of a few attorneys who is both registered to practice before the Patent and Trademark Office and that also holds an LLM degree in Trial Advocacy, which he obtained from Temple University. In addition, Michael obtained a bachelor of science degree *cum laude* in mechanical engineering from Villanova University. Michael also served five years in the U.S. Naval Submarine program. While serving in the Navy, Michael was certified by the U.S. Navy as a nuclear engineer and received advance training in electrical engineering.

Michael is currently the co-chair of the Firm's intellectual property department. Michael has served as the lead lawyer on patent litigations involved pharmaceutical and consumer products. Michael was the case manager for TruePosition, Inc. and was instrumental in achieving a settlement valued at about \$45 million for TruePosition, Inc. in *TruePosition, Inc. v. Allen Telecom, Inc.*, No. 01-0823 (D. Del.). Michael has also been the attorney that was primarily responsible for obtaining favorable settlements for defendants (*e.g.*, *Codman & Shurtleff, Inc. v. Integra LifeSciences Corp.*, No. 06-2414 (D. N.J.) (declaratory judgment action). Michael has litigated patent cases involving a wide range of technologies including balloon angioplasty catheters, collagen sponges, neurosurgery, sutures, shoulder surgery, knee surgery, orthopedic implants, pump technology, immunoassay testing, cellular telephones, computer software, signal processing, and electrical hardware. Michael has also served as a case manager for a plaintiff in a multidistrict patent litigation (MDL) involving multiple defendants and complex signal processing

Michael has written numerous articles and most recently authored an article entitled *Valuing Patent Infringement Actions After the Supreme Court's eBay Decision* (2008). In 2005, Michael was named a Rising Star by Pennsylvania SuperLawyer.

DAVID A. BOCIAN, a partner of the Firm, focuses his practice on whistleblower representation and False Claims Act litigation. Mr. Bocian spent more than ten years as a federal prosecutor in the U.S. Attorney's Office for the District of New Jersey, where he was appointed Senior Litigation Counsel and managed the Trenton U.S. Attorney's office. During his tenure, Mr. Bocian oversaw multifaceted investigations and prosecutions pertaining to government corruption and federal program fraud, commercial and public sector kickbacks, tax fraud, and other white collar and financial crimes. He tried numerous cases before federal juries, and was a recipient of the Justice Department's Director's Award for superior performance by an Assistant U.S. Attorney, as well as commendations from federal law enforcement agencies including the FBI and IRS.

Mr. Bocian has extensive experience in the health care field. As an adjunct professor of law, he teaches Healthcare Fraud and Abuse at Rutgers School of Law – Camden, and previously was employed in the health care industry, where he was responsible for implementing and overseeing a system-wide compliance program for a complex health system.

Mr. Bocian graduated *cum laude* from Princeton University and received his law degree from the University of Virginia School of Law. He is licensed to practice law in the Commonwealth of Pennsylvania, New Jersey, New York and the District of Columbia. Mr. Bocian began his legal career in Washington, D.C., as a litigation associate at Patton Boggs LLP, where his practice included internal corporate investigations, government contracts litigation and securities fraud matters.

GREGORY M. CASTALDO, a partner of the Firm, received his law degree from Loyola Law School, where he received the American Jurisprudence award in legal writing. He received his undergraduate degree from the Wharton School of Business at the University of Pennsylvania. He is licensed to practice law in Pennsylvania and New Jersey.

Mr. Castaldo served as one of Kessler Topaz's lead litigation partners in *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*, Master File No. 09 MDL 2058, recovering \$2.425 billion settlement for the class. Mr. Castaldo also served as the lead litigation partner in *In re Tenet Healthcare Corp.*, No. 02-CV-8462 (C.D. Cal. 2002), securing an aggregate recovery of \$281.5 million for the class, including \$65 million from Tenet's auditor. Mr. Castaldo also played a primary litigation role in the following cases: *In re Liberate Technologies Sec. Litig.*, No. C-02-5017 (MJJ) (N.D. Cal. 2005) (settled — \$13.8 million); *In re Sodexo Marriott Shareholders Litig.*, Consol. C.A. No. 18640-NC (Del. Ch. 1999) (settled — \$166 million benefit); *In re Motive, Inc. Sec. Litig.*, 05-CV-923 (W.D. Tex. 2005) (settled — \$7 million cash, 2.5 million shares); and *In re Wireless Facilities, Inc., Sec. Litig.*, 04-CV-1589 (S.D. Cal. 2004) (settled — \$16.5 million).

DARREN J. CHECK, a partner of the Firm, concentrates his practice in the area of securities litigation and institutional investor relations. He is a graduate of Franklin & Marshall College and received his law degree from Temple University School of Law. Mr. Check is licensed to practice in Pennsylvania and New Jersey.

Currently, Mr. Check concentrates his time as the Firm's Director of Institutional Relations and heads up the Firm's Portfolio Monitoring and Business Development departments. He consults with institutional investors from around the world regarding their rights and responsibilities with respect to their investments and taking an active role in shareholder litigation. Mr. Check assists clients in evaluating what systems they have in place to identify and monitor shareholder and consumer litigation that has an effect on their funds, and also assists them in evaluating the strength of such cases and to what extent they may be affected by the conduct that has been alleged. He currently works with clients in the United States, Canada, the Netherlands, United Kingdom, France, Italy, Sweden, Denmark, Finland, Norway, Germany, Austria, Switzerland and Australia.

Mr. Check regularly speaks on the subject of shareholder litigation, corporate governance, investor activism, and recovery of investment losses. Mr. Check has spoken at or participated in panel sessions at conferences around the world, including MultiPensions; the European Pension Symposium; the Public Funds Summit; the European Investment Roundtable; The Rights & Responsibilities of Institutional Investors; the Corporate Governance & Responsible Investment Summit; the Public Funds Roundtable; The Evolving Fiduciary Obligations of Pension Plans: Understanding the New Era of Corporate Governance; the International Foundation for Employee Benefit Plans Annual Conference; the Florida Public Pension Trustees Association Annual Conference, the Pennsylvania Association of Public Employees Retirement Systems Annual Meeting; and the Australian Investment Management Summit.

Mr. Check has also been actively involved in the precedent setting Shell settlement, direct actions against Vivendi and Merck, and the class action against Bank of America related to its merger with Merrill Lynch.

EDWARD W. CIOLKO, a partner of the Firm, received his law degree from Georgetown University Law Center, and an MBA from the Yale School of Management. He is licensed to practice law in the State of New Jersey, and has been admitted to practice before the Supreme Court of the United States, the United States District Court for the District of New Jersey and the United States Courts of Appeals for the First, Fourth, Ninth and Eleventh Circuits. Mr. Ciolko concentrates his practice in the areas of ERISA, Antitrust, RESPA and Consumer Protection.

Mr. Ciolko is counsel in several pending nationwide ERISA breach of fiduciary duty class actions, brought on behalf of retirement plans and their participants alleging, inter alia, imprudent investment of plan assets which caused significant losses to the retirement savings of tens of thousands of workers. These cases include: *In re Beazer Homes USA, Inc. ERISA Litig.*, 07-CV-00952-RWS (N.D. Ga. 2007); *Nowak v. Ford Motor Co.*, 240 F.R.D. 355 (E.D. Mich. 2006); *Gee v. UnumProvident Corp.*, 03-1552(E.D. Tenn. 2003); *Pettit v. JDS Uniphase Corp. et al.*, C.A. No. 03-4743 (N.D. Ca. 2003);

Hargrave v. TXU, et al., C.A. No. 02-2573 (N.D. Tex. 2002); *Evans v. Akers*, C.A. No. 04-11380 (D. Mass. 2004); *Lewis v. El Paso Corp.* No. 02-CV-4860 (S.D. Tex. 2002); and *In re Schering-Plough Corp. ERISA Litig.* No. 03-CV-1204 (D.N.J. 2003).

Mr. Ciolko's efforts have also helped achieve a number of large recoveries for affected retirement plan participants: *In re Sears Roebuck & Co. ERISA Litig.*, C.A. No. 02-8324 (N.D. Ill. 2002) (settled — \$14.5 million recovery); and *In re Honeywell Intern'l ERISA Litig.*, No. 03-CV-1214 (DRD) (D.N.J. 2003) (settled — \$14 million recovery, as well as significant structural relief regarding the plan's administration and investment of its assets).

Mr. Ciolko has also concentrated part of his practice to the investigation and prosecution of pharmaceutical antitrust actions, medical device litigation, and related anticompetitive and unfair business practices including *In re Wellbutrin SR Antitrust Litigation*, 04-CV-5898 (E.D. Pa. Dec. 17, 2004); *In re Remeron End-Payor Antitrust Litigation*, Master File No. 02-CV-2007 (D.N.J. Apr. 25, 2002); *In re Modafinil Antitrust Litigation*, 06-2020 (E.D. Pa. May 12, 2006); *In re Medtronic, Inc. Implantable Defibrillator Litigation*, 05-CV-2700 (D. Minn. 2005); and *In re Guidant Corp. Implantable Defibrillator Litigation*, 05-CV-2883 (D. Minn. 2005).

Before coming to Kessler Topaz, Mr. Ciolko worked for two and one-half years as a Law Clerk and Attorney Advisor to Commissioner Sheila F. Anthony of the Federal Trade Commission ("FTC"). While at the FTC, Mr. Ciolko reviewed commission actions/investigations and counseled the Commissioner on a wide range of antitrust and consumer protection topics including, in pertinent part: the confluence of antitrust and intellectual property law; research and production of "Generic Drug Entry Prior to Patent Expiration: An FTC Study," and an administrative complaint against, among others, Schering-Plough Corporation regarding allegedly unlawful settlements of patent litigation which delayed entry of a generic alternative to a profitable potassium supplement (K-Dur).

ELI R. GREENSTEIN is a partner in the Firm's San Francisco office and a member of the Firm's federal securities litigation practice group. Mr. Greenstein received his B.A. in Business Administration from the University of San Diego in 1997 where he was awarded the Presidential Scholarship. Mr. Greenstein received his J.D. from Santa Clara University School of Law in 2001, and his M.B.A. from Santa Clara's Leavey School of Business in 2002. Mr. Greenstein also was a judicial extern for the Honorable James Ware, Chief Judge of the United States District Court for the Northern District of California.

Mr. Greenstein's notable federal securities actions and recoveries include:

In re VeriFone Holdings, Inc. Sec. Litig., 2012 U.S. App. LEXIS 26133 (9th Cir. 2012); *Dobina v. Weatherford Int'l*, 2012 U.S. Dist. LEXIS 160663 (S.D.N.Y. 2012); *Minneapolis Firefighters Relief Ass'n v. Medtronic, Inc.*, 278 F.R.D. 454 (D. Minn.) (\$85 million recovery); *In re Sunpower Secs. Litig.*, 2011 U.S. Dist. LEXIS 152920 (N.D. Cal. 2011); *AOL Time Warner* state securities opt-out actions (including *Regents of the Univ. of Cal. v. Parsons* (Cal. Super. Ct.) and *Ohio Pub. Emps. Ret. Sys. v. Parsons* (Franklin County Ct. of Common Pleas) (\$618 million in total recoveries); *In re Am. Apparel, Inc. S'holder Litig.*, 2013 U.S. Dist. LEXIS 6977 (C.D. Cal. 2013); *In re Am. Serv. Group, Inc.*, 2009 U.S. Dist. LEXIS 28237 (M.D. Tenn. 2009) (\$15.1 million recovery); *In re Nuvelo, Inc. Sec. Litig.*, 668 F. Supp. 2d 1217 (N.D. Cal. 2009) (\$8.9 million recovery); *Greater Pa. Carpenters Pension Fund v. Whitehall Jewellers, Inc.*, 2005 U.S. Dist. LEXIS 12971 (N.D. Ill. 2005) (\$7.5 million recovery); *In re Endocare, Inc. Sec. Litig.*, No. CV02-8429 DT (CTX) (C.D. Cal. 2004) (\$8.95 million recovery); *In re Terayon Communs. Sys. Sec. Litig.*, 2002 U.S. Dist. LEXIS 5502 (N.D. Cal. 2002) (\$15 million recovery); *Parnes v. Harris (In re Purus)*, No. C-98-20449-JF(RS) (\$9.95 million recovery).

Prior to joining the Firm, Mr. Greenstein was a partner at Robbins Geller Rudman & Dowd LLP in its federal securities litigation practice group. His relevant background also includes consulting for

PricewaterhouseCoopers LLP's International Tax and Legal Services division, and work on the trading floor of the Chicago Mercantile Exchange, S&P 500 futures and options division.

SEAN M. HANDLER, a partner of the Firm and member of Kessler Topaz's Management Committee, currently concentrates his practice on all aspects of new matter development for the Firm including securities, consumer and intellectual property.

As part of these responsibilities, Mr. Handler also oversees the lead plaintiff appointment process in securities class actions for the Firm's clients. In this role, Mr. Handler has achieved numerous noteworthy appointments for clients in reported decisions including *Foley v. Transocean*, 272 F.R.D. 126 (S.D.N.Y. 2011); *In re Bank of America Corp. Sec., Derivative & Employment Ret. Income Sec. Act (ERISA) Litig.*, 258 F.R.D. 260 (S.D.N.Y. 2009) and *Tanne v. Autobyte, Inc.*, 226 F.R.D. 659 (C.D. Cal. 2005) and has argued before federal courts throughout the country, including the United States Court of Appeals for the Ninth Circuit.

Mr. Handler was also one of the principal attorneys in *In re Brocade Securities Litigation* (N.D. Cal. 2008), where the team achieved a \$160 million settlement on behalf of the class and two public pension fund class representatives. This settlement is believed to be one of the largest settlements in a securities fraud case in terms of the ratio of settlement amount to actual investor damages.

Mr. Handler received his Bachelor of Arts degree from Colby College, graduating *with distinction* in American Studies. Mr. Handler then earned his Juris Doctor, *cum laude*, from Temple University School of Law.

Mr. Handler also lectures and serves on discussion panels concerning securities litigation matters, most recently appearing at American Conference Institute's National Summit on the Future of Fiduciary Responsibility and Institutional Investor's The Rights & Responsibilities of Institutional Investors.

KIMBERLY A. JUSTICE, a partner of the Firm, graduated *magna cum laude* from Temple University School of Law, where she was Articles/Symposium Editor of the Temple Law Review and received the Jacob Kossman Award in Criminal Law. Ms. Justice earned her undergraduate degree, *cum laude* and Phi Beta Kappa, from Kalamazoo College. Upon graduating from law school, Ms. Justice served as a judicial clerk to the Honorable William H. Yohn, Jr. of the United States District Court for the Eastern District of Pennsylvania. Ms. Justice is licensed to practice law in Pennsylvania and admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

Ms. Justice joined the Firm after several years serving as a trial attorney and prosecutor in the Antitrust Division of the U.S. Department of Justice where she led teams of trial attorneys and law enforcement agents who investigated and prosecuted domestic and international cartel cases and related violations, and where her success at trial was recognized with the *Antitrust Division Assistant Attorney General Award of Distinction* for outstanding contribution to the protection of American consumers and competition. Since joining Kessler Topaz, Ms. Justice concentrates her practice in the area of securities litigation.

Ms. Justice began her practice as an associate at Dechert LLP where she defended a broad range of complex commercial cases, including antitrust and product liability class actions, and where she advised clients concerning mergers and acquisitions and general corporate matters.

DAVID KESSLER, a partner of the Firm, graduated with distinction from the Emory School of Law, after receiving his undergraduate B.S.B.A. degree from American University. Mr. Kessler is licensed to practice law in Pennsylvania, New Jersey and New York, and has been admitted to practice before numerous United States District Courts. Prior to practicing law, Mr. Kessler was a Certified Public Accountant in Pennsylvania.

Mr. Kessler manages the Firm's internationally recognized securities department and in this capacity, has achieved or assisted in obtaining Court approval for the following outstanding results in federal securities class action cases:

In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation, Master File No. 09 MDL 2058: A \$2.425 billion settlement, the sixth largest securities class action lawsuit settlement ever, received final approval from the Court in April 2013.

In re Tyco International, Ltd. Sec. Lit., No. 02-1335-B (D.N.H. 2002): This landmark \$3.2 billion settlement on behalf of investors included the largest securities class action recovery from a single corporate defendant in history as well as the second largest auditor settlement in securities class action history at the time.

In re Wachovia Preferred Securities and Bond/Notes Litigation, Master File No. 09 Civ. 6351 (RJS): This recovery of \$627 million is one of the most significant recoveries from litigation arising out of the financial crisis and is believed to be the single largest pure Section 11 recovery in securities class action history. The settlement included a \$37 million recovery from Wachovia Corporation's outside auditor.

In re: Lehman Brothers Securities and ERISA Litigation, Master File No. 09 MD 2017 (LAK): A \$516,218,000 settlement was reached on behalf of purchasers of Lehman securities — \$426,218,000 of which came from various underwriters of corporate offerings. In addition, \$90 million came from Lehman's former directors and officers, which is significant considering Lehman's bankruptcy meant diminishing assets available to pay any future judgment. The case is continuing against the auditors.

In re Satyam Computer Services Ltd. Sec. Litig., Master File No. 09 MD 02027 (BSJ): This \$150.5 million settlement on behalf of investors resulted from allegations that the Company had harmed investors by falsifying numerous financial indicators including company profits, cash flows, cash position, bank balances and related balance sheet data. The settlement included a \$25.5 million recovery from the Company's outside auditor and the case is continuing against the Company's officers and directors.

In re Tenet Healthcare Corp. Sec. Litig., No. CV-02-8462-RSWL (Rx) (C.D. Cal. 2002): This recovery of over \$280 million on behalf of investors included a substantial monetary commitment by the company, personal contributions from individual defendants, the enactment of numerous corporate governance changes, as well as a substantial recovery from the Company's outside auditor.

In re Initial Public Offering Sec. Litig., Master File No. 21 MC 92(SAS): This action settled for \$586 million after years of litigation overseen by U.S. District Judge Shira Scheindlin. Mr. Kessler served on the plaintiffs' executive committee for the case, which was based upon the artificial inflation of stock prices during the dot-com boom of the late 1990s that led to the collapse of the technology stock market in 2000 that was related to allegations of laddering and excess commissions being paid for IPO allocations.

Mr. Kessler is also currently serving as one of the Firm's primary litigation partners in the Citigroup, JPMorgan, Hewlett Packard, Pfizer and Morgan Stanley securities litigation matters.

In addition, Mr. Kessler often lectures and writes on securities litigation related topics and has been recognized as "Litigator of the Week" by the American Lawyer magazine for his work in connection with the Lehman Brothers securities litigation matter in December of 2011 and was honored by Benchmark as one of the preeminent plaintiffs practitioners in securities litigation throughout the country. Most recently Mr. Kessler co-authored *The FindWhat.com Case: Acknowledging Policy Considerations When Deciding Issues of Causation in Securities Class Actions* published in Securities Litigation Report.

JOSEPH H. MELTZER, a partner of the Firm, concentrates his practice in the areas of ERISA, fiduciary and antitrust complex litigation.

Mr. Meltzer leads the Firm's Fiduciary Litigation Group which has excelled in the highly specialized area of prosecuting cases involving breach of fiduciary duty claims. Mr. Meltzer has served as lead or co-lead counsel in numerous nationwide class actions brought under ERISA, including cases against El Paso Corp., Global Crossing, AOL Time Warner, and National City Corp. Since founding the Fiduciary Litigation Group, Mr. Meltzer has helped recover well over \$300 million for clients and class members including some of the largest settlements in ERISA fiduciary breach actions.

As part of his fiduciary litigation practice, Mr. Meltzer has been actively involved in actions related to losses sustained in securities lending programs including *Bd. of Trustees of the AFTRA Ret. Fund v. JPMorgan Chase Bank* and *CompSource Okla. v. BNY Mellon*; in addition, Mr. Meltzer is representing a publicly traded company in a large arbitration pending against AIG, Inc. related to securities lending losses. Mr. Meltzer also represents an institutional client in a fiduciary breach action against Wells Fargo for large losses sustained while Wachovia Bank and its subsidiaries, including Evergreen Investments, were managing the client's investment portfolio.

A frequent lecturer on ERISA litigation and employee benefits issues, Mr. Meltzer is a member of the ABA's Section Committee on Employee Benefits and has been recognized by numerous courts for his ability and expertise in this complex area of the law.

Mr. Meltzer also manages the Firm's Antitrust and Pharmaceutical Pricing Groups. Here, Mr. Meltzer focuses on helping clients that have been injured by anticompetitive and unlawful business practices, including with respect to overcharges related to prescription drug and other health care expenditures. Mr. Meltzer currently serves as co-lead counsel for direct purchasers in the *Flonase Antitrust Litigation* pending in the Eastern District of Pennsylvania and has served as lead or co-lead counsel in numerous nationwide actions, representing such clients as the Pennsylvania Turnpike Commission, the Southeastern Pennsylvania Transportation Authority (SEPTA) and the Sidney Hillman Health Center of Rochester. Mr. Meltzer also serves as a special assistant attorney general for the states of Montana, Utah and Alaska.

Mr. Meltzer lectures on issues related to antitrust litigation and is a member of the ABA's Section Committee on Antitrust Law.

Mr. Meltzer is an honors graduate of the University of Maryland and received his law degree with honors from Temple University School of Law. Honors include being named a Pennsylvania Super Lawyer.

PETER A. MUHIC, a partner of the Firm, is a graduate of Syracuse University and an honors graduate of the Temple University School of Law, where he was Managing Editor of the Temple Law Review and a member of the Moot Court Board.

Mr. Muhic has substantial trial and other courtroom experience involving complex actions in federal and state courts throughout the country. In addition to his trial recoveries, he has obtained significant monetary awards and settlements through arbitrations and mediations. In 2009, Mr. Muhic was co-lead trial counsel in one of the few class action ERISA cases ever to be tried, which involved claims against the fiduciaries of the 401k plan of an S&P 500 company for imprudent investment in company stock and misrepresentations to plan participants. Mr. Muhic primarily prosecutes class actions and/or collective actions concerning ERISA, FLSA, FHA, ECOA and numerous state consumer protection statutes and laws. He has served as lead counsel in numerous nationwide actions. He is licensed to practice law in Pennsylvania and New Jersey and also is admitted to the United States Courts of Appeals for the Third, Fifth, Seventh, Ninth and Eleventh Circuits, the United States District Courts for the Eastern and Middle Districts of Pennsylvania, the District of New Jersey and the District of Colorado.

Mr. Muhic serves as a Judge Pro Tem for the Court of Common Pleas of Philadelphia County, is a former Board Member of the SeniorLAW Center in Philadelphia and a past recipient of the White Hat Award for outstanding pro bono contributions to the Legal Clinic for the Disabled, a nonprofit organization in Philadelphia.

MATTHEW L. MUSTOKOFF, a partner of the Firm, is an experienced securities and corporate governance litigator. He has represented clients at the trial and appellate level in numerous high-profile shareholder class actions and other litigations involving a wide array of matters, including financial fraud, market manipulation, mergers and acquisitions, fiduciary mismanagement of investment portfolios, and patent infringement.

Mr. Mustokoff is currently prosecuting several nationwide securities cases, including *In re JPMorgan Chase Securities Litigation* (S.D.N.Y.) arising out of the "London Whale" derivatives trading scandal, and *In re Pfizer Inc. Securities Litigation* (S.D.N.Y.) involving the alleged non-disclosure of adverse clinical results surrounding the pain drugs Celebrex and Bextra. He also serves as lead counsel for six public pension funds in the multi-district securities litigation against BP in Texas federal court stemming from the 2010 *Deepwater Horizon* disaster in the Gulf of Mexico. Mr. Mustokoff played a major role in prosecuting *In re Citigroup Bond Litigation* (S.D.N.Y.), involving allegations that Citigroup concealed \$42 billion in exposure to subprime mortgage debt on the eve of the 2008 financial crisis. The \$730 million settlement marks the second largest recovery under Section 11 of the Securities Act in the history of the statute. His experience also includes serving as one of the lead trial lawyers for shareholders in the only securities fraud class action arising out of the credit market crisis to be tried to jury verdict.

Prior to joining the Firm, Mr. Mustokoff practiced at Weil, Gotshal & Manges LLP in New York, where he represented public companies and financial institutions in SEC enforcement and white collar criminal matters, shareholder litigation and contested bankruptcy proceedings.

Mr. Mustokoff currently serves as Co-Chair of the American Bar Association's Subcommittee on Securities Class Actions and Derivative Litigation. He was a featured panelist at the ABA Section of Litigation's 2010 Annual Conference on the subject of internal investigations and has lectured on corporate governance issues at the Cardozo School of Law. His publications include: "Proving Securities Fraud Damages at Trial," *Review of Securities & Commodities Regulation* (June 2013); "Is Item 303 Liability Under the Securities Act Becoming a 'Trend'?", *ABA Securities Litigation Journal* (Summer 2012); "The Maintenance Theory of Inflation in Fraud-on-the-Market Cases," *Securities Regulation Law Journal* (Spring 2012); "Delaware and Insider Trading: The Chancery Court Rejects Federal Preemption Arguments of Corporate Directors," *Securities Regulation Law Journal* (Summer 2010); "The Pitfalls of Waiver in Corporate Prosecutions: Sharing Work Product with the Government," *Securities Regulation Law Journal* (Fall 2009); "Scheme Liability Under Rule 10b-5: The New Battleground in Securities Fraud Litigation," *The Federal Lawyer* (June 2006); and "Sovereign Immunity and the Crisis of Constitutional Absolutism: Interpreting the Eleventh Amendment After *Alden v. Maine*," *Maine Law Review* (2001).

Mr. Mustokoff is a Phi Beta Kappa honors graduate of Wesleyan University. He received his law degree from the Temple University School of Law, where he was the articles and commentary editor of the *Temple Political and Civil Rights Law Review* and the recipient of the Raynes, McCarty, Binder, Ross and Mundy Graduation Prize for scholarly achievement in the law. He is admitted to practice before the state courts of New York and Pennsylvania, the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Pennsylvania and the District of Colorado, and the United States Courts of Appeals for the Eleventh and Federal Circuits.

SHARAN NIRMUL, a partner of the Firm, focuses on securities and corporate governance litigation. He has represented investors successfully in major securities fraud litigation including financial frauds

involving Bank of America, Transatlantic Holdings, Inc., Heckmann Corporation, Global Crossing Ltd, Qwest Communications International, WorldCom Inc., Delphi Corp., Marsh and McLennan Companies, Inc. and Able Laboratories. Mr. Nirmul has also represented shareholders in derivative and direct shareholder litigation in the Delaware Chancery Court and in other state courts around the country. Prior to joining the firm, Mr. Nirmul was associated with the Wilmington, Delaware law firm of Grant & Eisenhofer, P.A.

Sharan Nirmul received his law degree from The George Washington University Law School (J.D. 2001) where he served as an articles editor for the *Environmental Lawyer Journal* and was a member of the Moot Court Board. He was awarded the school's Lewis Memorial Award for excellence in clinical practice. He received his undergraduate degree from Cornell University (B.S. 1996).

Mr. Nirmul is admitted to practice law in the state courts of New York, New Jersey, Pennsylvania and Delaware and in the U.S. District Courts for the Southern District of New York, District of New Jersey, District of Delaware, and District of Colorado.

LEE D. RUDY, a partner of the Firm, manages the Firm's mergers and acquisition and shareholder derivative litigation. Representing both institutional and individual shareholders in these actions, he has helped cause significant monetary and corporate governance improvements for those companies and their shareholders. Most recently, Mr. Rudy served as co-lead trial counsel in the *In re Southern Peru* (Del. Ch. 2011) derivative litigation filed against Southern Peru's majority shareholder, which resulted in a landmark \$1.3 billion plaintiff's verdict. Previously, Mr. Rudy served as lead counsel in dozens of high profile derivative actions relating to the "backdating" of stock options, including litigation against the directors and officers of Comverse, Affiliated Computer Services, and Monster Worldwide. Prior to civil practice, Mr. Rudy served for several years as an Assistant District Attorney in the Manhattan (NY) District Attorney's Office, and as an Assistant United States Attorney in the US Attorney's Office (DNJ). He received his law degree from Fordham University, and his undergraduate degree, cum laude, from the University of Pennsylvania.

MARC A. TOPAZ, a partner of the Firm, received his law degree from Temple University School of Law, where he was an editor of the *Temple Law Review* and a member of the Moot Court Honor Society. He also received his Master of Law (L.L.M.) in taxation from the New York University School of Law, where he served as an editor of the *New York University Tax Law Review*. He is licensed to practice law in Pennsylvania and New Jersey, and has been admitted to practice before the United States District Court for the Eastern District of Pennsylvania. Mr. Topaz oversees the Firm's derivative, transactional and case development departments. In this regard, Mr. Topaz has been heavily involved in all of the Firm's cases related to the subprime mortgage crisis, including cases seeking recovery on behalf of shareholders in companies affected by the subprime crisis, as well as cases seeking recovery for 401K plan participants that have suffered losses in their retirement plans. Mr. Topaz has also played an instrumental role in the Firm's option backdating litigation. These cases, which are pled mainly as derivative claims or as securities law violations, have served as an important vehicle both for re-pricing erroneously issued options and providing for meaningful corporate governance changes. In his capacity as the Firm's department leader of case initiation and development, Mr. Topaz has been involved in many of the Firm's most prominent cases, including *In re Initial Public Offering Sec. Litig.*, Master File No. 21 MC 92(SAS) (S.D.N.Y. Dec. 12, 2002); *Wanstrath v. Doctor R. Crants, et al.*, No. 99-1719-111 (Tenn. Chan. Ct., 20th Judicial District, 1999); *In re Tyco International, Ltd. Sec. Lit.*, No. 02-1335-B (D.N.H. 2002) (settled — \$3.2 billion); and virtually all of the 80 options backdating cases in which the Firm is serving as Lead or Co-Lead Counsel. Mr. Topaz has played an important role in the Firm's focus on remedying breaches of fiduciary duties by corporate officers and directors and improving corporate governance practices of corporate defendants.

MICHAEL C. WAGNER, a partner of the Firm, handles class-action merger litigation and shareholder derivative litigation for the Firm's individual and institutional clients.

A graduate of Franklin and Marshall College and the University of Pittsburgh School of Law, Mr. Wagner has clerked for two appellate court judges and began his career at a Philadelphia-based commercial litigation firm, representing clients in business and corporate disputes across the United States. Mr. Wagner has also represented Fortune 500 companies in employment matters. He has extensive nationwide litigation experience and is admitted to practice in the courts of Pennsylvania, the United States Court of Appeals for the Third Circuit, and the United States District Courts for the Eastern and Western Districts of Pennsylvania, the Eastern District of Michigan, and the District of Colorado.

Frequently appearing in the Delaware Court of Chancery since joining Kessler Topaz, Mr. Wagner has helped to achieve substantial monetary recoveries for stockholders of public companies in cases arising from corporate mergers and acquisitions, including: *In re Genentech, Inc. Shareholders Litigation*, Consolidated C.A. No. 3911-VCS (Del. Ch.) (litigation caused Genentech's stockholders to receive \$3.9 billion in additional merger consideration from Roche); *In re Anheuser Busch Companies, Inc. Shareholders Litigation*, C.A. No. 3851-VCP (Del. Ch.) (settlement required enhanced disclosures to stockholders and resulted in a \$5 per share increase in the price paid by InBev in its acquisition of Anheuser-Busch); *In re GSI Commerce, Inc. Shareholders Litigation*, C.A. No. 6346-VCN (Del. Ch.) (settlement required additional \$23.9 million to be paid to public stockholders as a part of the company's merger with eBay, Inc.); and *In re AMICAS, Inc. Shareholder Litigation*, 10-0412-BLS2 (Mass. Super.) (litigation resulted in a third-party acquisition of the company, with stockholders receiving an additional \$26 million in merger consideration). Mr. Wagner was also a part of the team that prosecuted *In re Southern Peru Copper Corp. Shareholder Derivative Litigation*, C.A. No. 961-CS, which resulted in a \$1.9 billion post-trial judgment.

Mr. Wagner has also had a lead role in litigation that resulted in enhanced shareholder rights and corporate reforms in merger contexts, including: *In re Emulex Shareholder Litigation*, Consolidated C.A. No. 4536-VCS (Del. Ch.) (litigation caused company to redeem "poison pill" stock plan and rescind supermajority bylaw); *Solomon v. Take-Two Interactive Software, Inc.*, C.A. No. 3064-VCL (Del. Ch.) (settlement required substantial enhanced disclosures to stockholders regarding executive compensation matters in advance of director elections, and litigation caused company to redeem "poison pill" stock plan); and *Olson v. ev3, Inc.*, C.A. No. 5583-VCL (Del. Ch.) (settlement required a merger's "top-up option" feature to be revised to as to comply with Delaware law).

In shareholder derivative cases involving executive compensation matters, Mr. Wagner has also had a lead role in cases that achieved substantial financial recoveries and reforms for publicly traded companies, such as *In re KV Pharmaceutical Co., Inc. Derivative Litigation*, Case No. 4:07-cv-00384-HEA (E.D. Mo.) (litigation caused executives to make financial remediation of approximately \$3 million and resulted in enhanced internal controls at the company concerning financial reporting); *In re Medarex, Inc. Derivative Litigation*, Case No. MER-C-26-08 (N.J. Super.) (settlement resulted in approximately \$9 million in financial remediation and substantial corporate governance reforms related to executive compensation); *Harbor Police Retirement System v. Roberts*, Cause No. 09-09061 (95th District Court, Dallas County, Texas) (settlement required substantial modifications to corporate policies, designed to heighten the independence of outside directors in awarding executive compensation); and *In re Comverse Technologies, Inc. Derivative Litigation* (Index No. 601272/06, N.Y. Supreme Ct.) (settlement required disgorgement of more than \$60 million from the company's executive officers for their receipt of backdated stock options).

JOHNSTON de F. WHITMAN, JR., a partner of the Firm, focuses his practice on securities litigation. Mr. Whitman graduated cum laude from Colgate University. He received his law degree from Fordham University School of Law, where he was a member of the Fordham International Law Journal. He is licensed to practice in Pennsylvania and New York as well as before the United States Courts of Appeals for the Second and Fourth Circuits. Prior to joining the Firm, Mr. Whitman was a partner of Entwistle & Cappucci LLP in New York, where he also concentrated his practice on securities litigation.

Mr. Whitman has represented institutional investors in obtaining substantial recoveries in numerous securities fraud class actions, including *In re Royal Ahold Sec. Litig.*, No. 03-md-01539 (D. Md. 2003) (settled -- \$1.1 billion); *In re DaimlerChrysler AG Sec. Litig.*, No. 00-0993 (D. Del. 2000) (settled -- \$300 million); and *In re Dollar General, Inc. Sec. Litig.*, No. 01-cv-0388 (M.D. Tenn. 2001) (settled \$162 million). Mr. Whitman has also obtained favorable recoveries for institutional investors pursuing direct securities fraud claims, including cases against Qwest Communications International, Inc. and Merrill Lynch & Co., Inc.

ROBIN WINCHESTER, a partner of the Firm, received her Bachelor of Science degree in Finance from St. Joseph's University. Ms. Winchester then earned her Juris Doctor degree from Villanova University School of Law, and is licensed to practice law in Pennsylvania and New Jersey. After law school, Ms. Winchester served as a law clerk to the Honorable Robert F. Kelly in the United States District Court for the Eastern District of Pennsylvania.

After joining KTMC, Ms. Winchester concentrated her practice in the areas of securities litigation and lead plaintiff litigation. Presently, Ms. Winchester concentrates her practice in the area of shareholder derivative actions, and, most recently, has served as lead counsel in numerous high-profile derivative actions relating to the backdating of stock options, including *In re Eclipsys Corp. Derivative Litigation*, Case No. 07-80611-Civ-MIDDLEBROOKS (S.D. Fla.); *In re Juniper Derivative Actions*, Case No. 5:06-cv-3396-JW (N.D. Cal.); *In re McAfee Derivative Litigation*, Master File No. 5:06-cv-03484-JF (N.D. Cal.); *In re Quest Software, Inc. Derivative Litigation*, Consolidated Case No. 06CC00115 (Cal. Super. Ct., Orange County); and *In re Sigma Designs, Inc. Derivative Litigation*, Master File No. C-06-4460-RMW (N.D. Cal.). Settlements of these, and similar, actions have resulted in significant monetary returns and corporate governance improvements for those companies, which, in turn, greatly benefits their public shareholders.

MICHAEL K. YARNOFF, a partner of the Firm, received his law degree from Widener University School of Law. Mr. Yarnoff is licensed to practice law in Pennsylvania, New Jersey, and Delaware and has been admitted to practice before the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey. In addition to actively litigating and assisting in achieving the historic Tyco settlement, Mr. Yarnoff served as the primary litigating partner on behalf of Kessler Topaz in the following cases: *In re CVS Corporation Sec. Litig.*, C.A. No. 01-11464 JLT (D.Mass. 2001) (settled — \$110 million); *In re Transkaryotic Therapies, Inc. Sec. Litig.*, Civil Action No. 03-10165-RWZ (D.Mass. 2003) (settled — \$50 million); *In re Riverstone Networks, Inc. Sec. Litig.*, Case No. CV-02-3581 (N.D. Cal. 2002) (settled — \$18.5 million); *In re Zale Corporation Sec. Litig.*, 06-CV-1470 (N.D. Tex. 2006) (settled — \$5.9 million); *Gebhard v. ConAgra Foods Inc., et al.*, 04-CV-427 (D. Neb. 2004) (settled — \$14 million); *Reynolds v. Repsol YPF, S.A., et al.*, 06-CV-733 (S.D.N.Y. 2006) (settled — \$8 million); and *In re InfoSpace, Inc. Sec. Litig.*, 01-CV-913 (W.D. Wash. 2001) (settled — \$34.3 million).

ERIC L. ZAGAR, a partner of the Firm, received his law degree from the University of Michigan Law School, cum laude, where he was an Associate Editor of the *Michigan Law Review*. He has practiced law in Pennsylvania since 1995, and previously served as a law clerk to Justice Sandra Schultz Newman of the Pennsylvania Supreme Court. He is admitted to practice in Pennsylvania, California, and New York.

In addition to his extensive options backdating practice, Mr. Zagar concentrates his practice in the area of shareholder derivative litigation. In this capacity, Mr. Zagar has served as Lead or Co-Lead counsel in numerous derivative actions in courts throughout the nation, including *David v. Wolfen*, Case No. 01-CC-03930 (Orange County, CA 2001) (Broadcom Corp. Derivative Action); and *In re Viacom, Inc. Shareholder Derivative Litig.*, Index No. 602527/05 (New York County, NY 2005). Mr. Zagar has successfully achieved significant monetary and corporate governance relief for the benefit of

shareholders, and has extensive experience litigating matters involving Special Litigation Committees. Mr. Zagar is also a featured speaker at Kessler Topaz's annual symposium on corporate governance.

TERENCE S. ZIEGLER, a partner of the Firm, received his law degree from the Tulane University School of Law and received his undergraduate degree from Loyola University. He has concentrated a significant percentage of his practice to the investigation and prosecution of pharmaceutical antitrust actions, medical device litigation, and related anticompetitive and unfair business practice claims. Specific examples include: *In re Flonase Antitrust Litigation*; *In re Wellbutrin SR Antitrust Litigation*; *In re Modafinil Antitrust Litigation*; *In re Guidant Corp. Implantable Defibrillators Products Liability Litigation* (against manufacturers of defective medical devices — pacemakers/implantable defibrillators — seeking costs of removal and replacement); and *In re Actiq Sales and Marketing Practices Litigation* (regarding drug manufacturer's unlawful marketing, sales and promotional activities for non-indicated and unapproved uses).

Mr. Ziegler is licensed to practice law in the State of Louisiana, and has been admitted to practice before several courts including the United States Court of Appeals for the Third Circuit.

ANDREW L. ZIVITZ, a partner of the Firm, received his law degree from Duke University School of Law, and received a Bachelor of Arts degree, with distinction, from the University of Michigan, Ann Arbor.

Mr. Zivitz concentrates his practice in the area of securities litigation and is currently litigating several of the largest federal securities fraud actions in the U.S. including matters against Pfizer, Inc., JPMorgan Chase & Co., UBS AG, Morgan Stanley and Countrywide Financial Corporation. Mr. Zivitz has helped the firm achieve extraordinary results in numerous securities fraud matters in which Kessler Topaz was Lead or Co-Lead Counsel, including *In re Tenet Healthcare Corp.*, 02-CV-8462 (C.D. Cal. 2002) (settled — \$281.5 million); *In re Computer Associates Sec. Litig.*, No. 02-CV-122 6 (E.D.N.Y. 2002) (settled — \$150 million); *In re Medtronic Inc. Sec. Litig.*, 08-cv-0624 (D. Minn. 2008) (settlement pending - \$ 85 million); *In re McLeod USA Inc. Sec. Litig.*, No. C02-0001-MWB (N.D. Iowa 2002) (settled — \$30 million); and *In re Barrick Gold Sec. Litig.*, 03-cv-04302 (S.D.N.Y.2003) (settled — \$24 million).

Mr. Zivitz has litigated cases in federal district and appellate courts throughout the country, including two successful appeals before the United States Court of Appeals for the Ninth Circuit in *In re Merix Sec. Litig.*, 04-cv-00826 (D.Or. 2004) and *In re Leadis Sec. Litig.*, 05-cv-00882 (N.D.Ca. 2005). His experience also includes serving as one of the lead trial attorneys for shareholders in the only securities fraud class action arising out of the credit market crisis to be tried to a jury verdict.

Mr. Zivitz also lectures and serves on discussion panels concerning securities litigation matters. Mr. Zivitz recently was a faculty member at the Pennsylvania Bar Institute's workshop entitled, "Securities Liability in Turbulent Times: Practical Responses to a Changing Landscape."

ASSOCIATES AND OTHER PROFESSIONALS

JULES D. ALBERT, an associate of the Firm, concentrates his practice in mergers and acquisition litigation and stockholder derivative litigation. Mr. Albert is licensed to practice law in Pennsylvania, and has been admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

Mr. Albert has litigated in state and federal courts across the country, and has represented stockholders in numerous actions that have resulted in significant monetary recoveries and corporate governance improvements, including: *In re Sunrise Senior Living, Inc. Deriv. Litig.*, No. 07-00143 (D.D.C.); *Mercier v. Whittle, et al.*, No. 2008-CP-23-8395 (S.C. Ct. Com. Pl., 13th Jud. Cir.); *In re K-V Pharmaceutical Co. Deriv. Litig.*, No. 06-00384 (E.D. Mo.); *In re Progress Software Corp. Deriv. Litig.*, No. SUCV2007-

01937-BLS2 (Mass. Super. Ct., Suffolk Cty.); *In re Quest Software, Inc. Deriv. Litig.* No 06CC00115 (Cal. Super. Ct., Orange Cty.); and *Quaco v. Balakrishnan, et al.*, No. 06-2811 (N.D. Cal.).

Mr. Albert received his law degree from the University of Pennsylvania Law School, where he was a Senior Editor of the *University of Pennsylvania Journal of Labor and Employment Law* and recipient of the James Wilson Fellowship. Mr. Albert also received a Certificate of Study in Business and Public Policy from The Wharton School at the University of Pennsylvania. Mr. Albert graduated magna cum laude with a Bachelor of Arts in Political Science from Emory University.

ALI M. AUDI, a staff attorney of the Firm, received his law degree from The Pennsylvania State University, Dickinson School of Law, where he was a member of the Trial and Appellate Moot Court boards. He received his Bachelor of Arts in Journalism from The Pennsylvania State University. Mr. Audi is licensed to practice before the state courts of Pennsylvania and New Jersey, and the United States District Court for the District of New Jersey. He concentrates his practice in the area of securities litigation.

ADRIENNE BELL, an associate of the Firm, received her law degree from Brooklyn Law School and her undergraduate degree in Music Theory and Composition from New York University, where she graduated *magna cum laude*. Prior to joining the Firm, Ms. Bell practiced in the areas of mass tort, commercial and general liability litigation. Ms. Bell is licensed to practice in Pennsylvania and Nevada, and works in the Firm's case development department.

MATTHEW BENEDICT, a staff attorney of the Firm, concentrates his practice in the area of securities litigation. Prior to joining the firm, he worked as a staff attorney in the White Collar / Securities Litigation department at Dechert LLP. Mr. Benedict earned his law degree from Villanova University School of Law and his undergraduate degree from Haverford College. He is licensed to practice law in Pennsylvania and New Jersey.

SHANNON O. BRADEN, an associate of the Firm, received her law degree from the University of Pittsburgh School of Law and her undergraduate degree in International Relations and French from Bucknell University. While a law student, Ms. Lack served as a judicial clerk for the Honorable Max Baer of the Supreme Court of Pennsylvania. She also served as a Managing Editor of the University of Pittsburgh *Journal of Law and Commerce*. Ms. Lack has authored "Civil Rights for Trafficked Persons: Recommendations for a More Effective Federal Civil Remedy," University of Pittsburgh School of Law, *Journal of Law and Commerce*, Vol. 26 (2007). Ms. Lack is licensed to practice law in Pennsylvania and New Jersey. She concentrates her practice in the areas of ERISA and consumer protection litigation.

PAUL BREUCOP, an associate in the Firm's San Francisco office, received his Bachelor of Arts from Santa Clara University with majors in Classical Studies and Religious Studies. He received his law degree from the University of California, Hastings College of the Law. While in law school, Mr. Breucop interned for the Securities and Exchange Commission Enforcement Division and the California Teachers Association. He also taught constitutional law to high school students in Oakland as part of the Marshall-Brennan Program. Mr. Breucop concentrates his practice on prosecuting securities class actions. He is admitted to the California Bar.

BETHANY O'NEILL BYRNE, a staff attorney of the Firm, received her law degree from the Widener University School of Law in Delaware and her undergraduate degree from Villanova University. She is licensed to practice law in the Commonwealth of Pennsylvania and the State of New Jersey. Ms. Byrne concentrates her practice in the area of securities litigation.

ELIZABETH WATSON CALHOUN, a staff attorney of the Firm, focuses on securities litigation. She has represented investors in major securities fraud and has also represented shareholders in derivative and

direct shareholder litigation. Prior to joining the Firm, Ms. Calhoun was employed with the Wilmington, Delaware law firm of Grant & Eisenhofer, P.A.

Ms. Calhoun received her law degree from Georgetown University Law Center (*cum laude*), where she served as Executive Editor of the Georgetown Journal of Gender and the Law. She received her undergraduate degree in Political Science from the University of Maine, Orono (*with high distinction*).

Ms. Calhoun is admitted to practice before the state court of Pennsylvania and the U.S. District Court for the Eastern District of Pennsylvania.

SEKOU CAMPBELL, an associate of the Firm, concentrates his practice in the area of securities litigation.

Prior to joining the Firm, Mr. Campbell served as an associate in the entertainment and litigation departments at Fox Rothschild LLP. He also interned for the Honorable Kiyo A. Matsumoto of the United States District Court for the Eastern District of New York. In 2012, The Network Journal honored Mr. Campbell with a “Forty under 40” Award. In 2013, the Lawyers of Color LLC placed him on their inaugural “Hot List” of attorneys.

Mr. Campbell received his Juris Doctor from Benjamin N. Cardozo Law School, where he served as an associate articles editor for the Cardozo Arts & Entertainment Law Journal and received the Cardozo Service & Achievement Award. He also possesses a Masters of Fine Arts in Theater from Columbia University, where he represented the student body on the Faculty Senate. He obtained a Bachelor’s degree from Vanderbilt University, where he was a Dean’s scholar.

Currently, Mr. Campbell serves as the Barristers’ Association of Philadelphia’s Treasurer and as an ex officio member of the Public Interest Law Center of Philadelphia’s Board of Directors.

Mr. Campbell is licensed to practice law in the Commonwealth of Pennsylvania and the State of New Jersey as well as the United States District Court for the Eastern District of Pennsylvania.

QUIANA CHAPMAN-SMITH, a staff attorney at the Firm, received her law degree from Temple University Beasley School of Law in Pennsylvania and her Bachelor of Science in Management and Organizations from The Pennsylvania State University. Prior to joining Kessler Topaz, she worked in pharmaceutical litigation. She is licensed to practice law in the Commonwealth of Pennsylvania. Ms. Chapman-Smith concentrates her practice in the area of securities litigation.

EMILY N. CHRISTIANSEN, an associate of the Firm, focuses her practice in securities litigation and international actions in particular. Ms. Christiansen received her Juris Doctor and Global Law certificate, cum laude, from Lewis and Clark Law School in 2012. Ms. Christiansen is a graduate of the University of Portland, where she received her Bachelor of Arts, cum laude, in Political Science and German Studies. While in law school, Ms. Christiansen worked as an intern in Trial Chambers III at the International Criminal Tribunal for the Former Yugoslavia. Ms. Christiansen also spent two months in India as foreign legal trainee with the corporate law firm of Fox Mandal. Ms. Christiansen is a 2007 recipient of a Fulbright Fellowship and is fluent in German.

Ms. Christiansen is currently licensed to practice law in the state of New York.

SARA A. CLOSIC, a staff attorney of the Firm. She concentrates her practice in the area of securities litigation.

* Education

- * Widener University School of Law in Wilmington, Delaware, J.D.
- * Pennsylvania State University in State College, Pennsylvania, undergraduate degree in Marketing, with a minor in International Business

* Professional Activities and Community Involvement

During law school, Mrs. Closic interned at the U.S. Food and Drug Administration and the Delaware Department of Justice in the Consumer Protection & Fraud Division where she was heavily involved in protecting consumers within a wide variety of subject areas.

Prior to joining the Firm, Mrs. Closic practiced in the areas of pharmaceutical & health law litigation, and was an Associate at a general practice firm in Bensalem, Pennsylvania.

* Admissions

Pennsylvania

New Jersey

JOSHUA E. D'ANCONA, an associate of the Firm, received his J.D., magna cum laude, from the Temple University Beasley School of Law in 2007, where he served on the Temple Law Review and as president of the Moot Court Honors Society. Before joining the Firm in 2009, he served as a law clerk to the Honorable Cynthia M. Rufe of the United States District Court for the Eastern District of Pennsylvania. Mr. D'Ancona graduated with honors from Wesleyan University. He is licensed to practice in Pennsylvania and New Jersey, and practices in the securities litigation and lead plaintiff departments of the firm.

JONATHAN R. DAVIDSON, an associate of the Firm, concentrates his practice in the area of shareholder litigation. He consults with Firm clients regarding their rights and responsibilities with respect to their investments and taking an active role in shareholder litigation. Mr. Davidson also assists clients in evaluating what systems they have in place to identify and monitor shareholder litigation that has an impact on their funds, and also assists them in evaluating the strength of such cases and to what extent they may be affected by the conduct that has been alleged. Mr. Davidson currently works with numerous U.S. institutional investors, including public pension plans at the state, county and municipal level, as well as Taft-Hartley funds across all trades. Mr. Davidson has spoken on the subjects of shareholder litigation, corporate governance, investor activism and recovery of investment losses at conferences around the world, including the National Conference on Public Employee Retirement Systems' Annual Conference & Exhibition, the International Foundation of Employee Benefit Plans Annual Conference, the California Association of Public Retirement Systems Administrators Roundtable, the Florida Public Pension Trustees Association Trustee Schools and Wall Street Program, the Pennsylvania Association of Public Employees Retirement Systems Spring Forum; the Fiduciary Investors Symposium, numerous U.S. Markets' Institutional Investor Forums, and The Evolving Fiduciary Obligations of Pension Plans. Mr. Davidson is also a member of numerous professional and educational organizations, including the National Association of Public Pension Attorneys.

Mr. Davidson is a graduate of The George Washington University where he received his Bachelor of Arts, *summa cum laude*, in Political Communication. Mr. Davidson received his Juris Doctor and Dispute Resolution Certificate from Pepperdine University School of Law and is licensed to practice law in the State of California.

RYAN T. DEGNAN, an associate of the Firm, concentrates his practice on new matter development with a specific focus on analyzing securities class action lawsuits, antitrust actions, and complex consumer actions. Mr. Degnan is also a member of the Firm's lead plaintiff litigation practice group and, in this role, has helped secure the Firm's clients' appointments as lead plaintiffs in: *In re HP Sec. Litig.*, No. 12-cv-5090, 2013 WL 792642 (N.D. Cal. Mar. 4, 2013); *In re JPMorgan Chase & Co. Sec. Litig.*, No. 12-cv-

03852 (S.D.N.Y.); *Freedman v. St. Jude Medical, Inc., et al.*, No. 12-cv-3070 (D. Minn.); *Louisiana Municipal Police Employees' Ret. Sys. v. Green Mountain Coffee Roasters, Inc., et al.*, No. 11-cv-289, 2012 U.S. Dist. LEXIS 89192 (D. Vt. Apr. 27, 2012); and *In re Longtop Fin. Techs. Ltd. Sec. Litig.*, No. 11-cv-3658, 2011 U.S. Dist. LEXIS 112970 (S.D.N.Y. Oct. 4, 2011). Additionally, Mr. Degnan is currently litigating claims in *Woods v. Google Inc.*, No. 11-cv-1263 (N.D. Cal.).

Mr. Degnan received his law degree from Temple University Beasley School of Law in 2010, where he was a Notes and Comments Editor for the Temple Journal of Science, Technology & Environmental Law. Mr. Degnan earned his undergraduate degree in Biology from The Johns Hopkins University in 2004. While a law student, Mr. Degnan served as a Judicial Intern to the Honorable Gene E.K. Pratter of the United States District Court for the Eastern District of Pennsylvania. Mr. Degnan is licensed to practice in Pennsylvania and New Jersey, as well as before the United States District Court for the Eastern District of Pennsylvania.

BENJAMIN J. DE GROOT, an associate of the Firm, received his law degree from Columbia Law School where he was a Stone Scholar. He earned his B.A., with honors, in Philosophy and German Studies from the University of Arizona. Mr. de Groot is licensed to practice law in Pennsylvania and New York.

Following a clerkship with Judge Robert W. Sweet of the Southern District of New York, Mr. de Groot practiced litigation as an associate at Cleary Gottlieb Steen and Hamilton, LLP in New York. Prior to joining Kessler Topaz, he helped found A.I.S.G., a startup security integration firm in New York. Mr. de Groot's practice is currently focused in the case development department and he assists with the Firm's litigation discovery.

ANDREW DODEMAIDE, an associate of the Firm, concentrates his practice on new matter development with a specific focus on analyzing securities class action lawsuits, antitrust actions, and complex consumer actions. Mr. Dodemaide is also a member of the Firm's lead plaintiff litigation practice group.

* Education:

J.D. - Rutgers School of Law – Camden, 2012, *summa cum laude*

Editor-In-Chief: Rutgers Journal of Law and Public Policy

Finalist: Hunter Moot Court Competition

B.A. – Rutgers University, Rutgers College, 2008, *summa cum laude*

* Admissions:

New Jersey, Pennsylvania

* Clerkships:

Hon. Jack M. Sabatino, J.A.D., N.J. Superior Court, Appellate Division, 2012 - 2013

DONNA EAGLESON, a staff attorney of the Firm, received her law degree from the University of Dayton School of Law in Dayton, Ohio. Prior to joining Kessler Topaz, Ms. Eagleson worked as an attorney in the law enforcement field, and practiced insurance defense law with the Philadelphia firm Margolis Edelstein. Ms. Eagleson is licensed to practice law in Pennsylvania and concentrates in the area of securities litigation discovery matters.

JENNIFER P. ELWELL, a staff attorney at the Firm, concentrates her practice in the areas of ERISA and consumer protection litigation.

* Education

Undergraduate degree from Villanova University

Law degree from Temple University School of Law where she was a member of the Temple Law Review.

***Professional Activities and Community Involvement**

Before joining Kessler Topaz, Ms. Elwell was an associate at Pepper Hamilton LLP and a senior staff attorney at Dechert LLP where she practiced in the area of pharmaceutical litigation.

***Admissions**

Pennsylvania

New Jersey

JENNIFER L. ENCK, an associate of the Firm, received her law degree, cum laude, from Syracuse University College of Law in 2003 and her undergraduate degree in International Politics from The Pennsylvania State University in 1999. Ms. Enck also received a Masters degree in International Relations from Syracuse University's Maxwell School of Citizenship and Public Affairs.

Prior to joining Kessler Topaz, Ms. Enck was an associate with Spector, Roseman & Kodroff, P.C. in Philadelphia, where she worked on a number of complex antitrust, securities and consumer protection cases. Ms. Enck is licensed to practice law in Pennsylvania. She concentrates her practice in the areas of securities litigation and settlement matters.

MONIQUE MYATT GALLOWAY, an associate with the Firm, concentrates her practice in the areas of ERISA, antitrust, and consumer protection litigation.

Ms. Galloway brings to the Firm ten years of complex defense litigation experience. Prior to joining the Firm, Ms. Galloway was a senior trial attorney for the Department of the Navy, Office of General Counsel in Washington, D.C., and later, an associate at DLA Piper LLP (US) in Philadelphia, Pennsylvania. Ms. Galloway has substantial government and private sector experience in the areas of government contracts, construction, product liability, toxic tort, and antitrust litigation in federal and state courts nationwide. She has extensive successful motion practice on claims involving alleged mass torts, wrongful death, warranties, fraud, unfair business practices and anti-competition violations. Ms. Galloway also has successful first and second chair non-jury trial experience.

In 2012 and 2013, Ms. Galloway was selected as a Pennsylvania Super Lawyers® Rising Star.

Ms. Galloway is a former federal judicial law clerk for the Honorable Cynthia M. Rufe of the United States District Court for the Eastern District of Pennsylvania. In 2003, Ms. Galloway received her juris doctorate from Thurgood Marshall School of Law, with *cum laude* honors, where she was Managing Editor of the Thurgood Marshall Law Review. In 2008, she received her LL.M. in Trial Advocacy from Temple University, and received her Bachelor of Business Administration in Accounting from Texas Southern University in 2000.

Ms. Galloway is licensed to practice law in Pennsylvania and Texas. She is also admitted to practice before the Supreme Court of the United States, the United States Court of Appeals for the Third Circuit Court, the Eastern District of Pennsylvania, and the United States Court of Federal Claims.

Ms. Galloway currently serves as the Vice-President of Administration for the Barristers' Association of Philadelphia, Inc. and is a member of the Board of Directors for the Public Interest Law Center of Philadelphia. In addition to her service to clients and the legal community, she is a member of Alpha Kappa Alpha Sorority, Incorporated, Omega Omega Chapter.

KIMBERLY V. GAMBLE, a staff attorney at the Firm, received her law degree from Widener University, School of Law in Wilmington, DE. While in law school she was a CASA/Youth Advocates

volunteer and had internships with the Delaware County Public Defender's Office as well as The Honorable Judge Ann Osborne in Media, Pennsylvania. She received her Bachelor of Arts degree in Sociology from The Pennsylvania State University.

Prior to joining Kessler Topaz, she worked in pharmaceutical litigation and now concentrates her practice in the area of securities litigation. Ms. Gamble is licensed to practice law in the Commonwealth of Pennsylvania.

WARREN GASKILL, a staff attorney at the Firm, received his law degree from the Widener University School of Law, Wilmington, DE and his undergraduate degree from Rutgers, the State University of New Jersey, New Brunswick, NJ. Immediately following law school, Mr. Gaskill served as a law clerk for The Honorable Valerie H. Armstrong, A.J.S.C., New Jersey Superior Court, in Atlantic City, NJ. Prior to joining Kessler Topaz, Mr. Gaskill was an associate at the Atlantic City, NJ based law firm of Cooper, Levenson, April, Neidelman, and Wagenheim PA. Mr. Gaskill concentrates in the area of securities law and is admitted to bar in Pennsylvania, New Jersey and the U.S. District Court, District of New Jersey.

TAMARA GAVRILOVA, an associate of the Firm, concentrates her practice on mergers and acquisition litigation and shareholder derivative litigation. Ms. Gavrilova previously served as a full-time extern for the Division of Enforcement of the United States Securities & Exchange Commission. She also served as an intern to the Honorable Allan L. Gropper of the United States Bankruptcy Court for the Southern District of New York.

* Education

Cornell Law School in 2013, where she served as Article Editor of the *Cornell Journal of Law & Public Policy*.

She graduated from Baruch College - City University of New York, *magna cum laude*, with a Bachelor of Business Administration.

* Admissions

New York

ABIGAIL J. GERTNER, a staff attorney of the Firm, concentrates her practice in consumer and ERISA litigation. Ms. Gertner has experience in a wide range of litigation including securities, consumer, pharmaceutical, and toxic tort matters. Prior to joining the Firm, Ms. Gertner was an associate with the Wilmington, Delaware law firm of Maron, Marvel, Bradley & Anderson. Before that, she was employed by the Wilmington office of Grant & Eisenhofer, P.A.

* Professional Activities and Community Involvement

Ms. Gertner actively supports a number of non-profit organizations including the Red Cross and the United States Humane Society.

* Education

2003, Santa Clara University School of Law, J.D.

2000, Tulane University, B.A., B.S. (*cum laude*)

* Bar Admissions

Pennsylvania

Eastern District of Pennsylvania

New Jersey

District of New Jersey

MATTHEW A. GOLDSTEIN, an associate of the Firm, received his law degree from Rutgers School of Law – Camden and his Bachelor of Arts degree, *magna cum laude*, from The George Washington University. While in law school, Mr. Goldstein served as Associate Editor of Business and Marketing for the Rutgers Journal of Law and Religion. Mr. Goldstein also participated in the Children’s Justice Clinic, representing indigent minors in criminal matters.

Prior to joining Kessler Topaz, Mr. Goldstein was an associate in the commercial litigation department of Zarwin Baum DeVito Kaplan Schaer & Toddy, P.C. in the Philadelphia office. There, Mr. Goldstein concentrated his practice in commercial, corporate and real estate litigation.

Mr. Goldstein is licensed to practice law in Pennsylvania and New Jersey and concentrates his practice in mergers and acquisitions litigation and shareholder derivative litigation.

TYLER S. GRADEN, an associate of the Firm, received undergraduate degrees in Economics and International Relations from American University, and his Juris Doctor degree from Temple Law School. Mr. Graden is licensed to practice law in Pennsylvania and New Jersey and has been admitted to practice before numerous United States District Courts. Mr. Graden concentrates his practice in the areas of ERISA, employment law and consumer protection litigation.

Mr. Graden currently represents plaintiffs in a number of putative class actions brought nationwide alleging that certain mortgage servicers engaged in improper and unlawful kickback schemes with force-placed insurance providers.

Prior to joining Kessler Topaz, Mr. Graden practiced with a Philadelphia law firm where he litigated various complex commercial matters and served as an investigator with the Chicago District Office of the Equal Employment Opportunity Commission.

JOHN DEREK GUYNN, a staff attorney at the Firm. Mr. Guynn concentrates his practice on mergers and acquisitions litigation and shareholder derivative litigation. Prior to joining the Firm, Mr. Guynn practiced as an Assistant Public Defender in Bucks County, Pennsylvania, followed by a solo criminal defense practice and work in pharmaceutical and securities litigation.

* Education

B.A. in English from Roanoke College, where he was the Charles Wise Poet
J.D. from Widener University School of Law, during which time he was a judicial extern for the Honorable Joseph D. O’Keefe at the Philadelphia Court of Common Pleas Complex Litigation Center

* Admissions

Commonwealth of Pennsylvania

MARK K. GYANDOH, an associate of the Firm, concentrates his practice in the area of ERISA and consumer protection litigation. Mr. Gyandoh litigates ERISA fiduciary breach class actions across the country and was part of one of the few trial teams that have ever tried a “company stock” imprudent investment case to verdict in *Brieger et al. v. Tellabs, Inc.*, No. 06-CV-01882 (N.D. Ill.).

Mr. Gyandoh received his undergraduate degree from Haverford College (B.A. 1996) and his J.D. (2001) and LLM in trial advocacy (2011) from Temple University School of Law. While attending law school, Mr. Gyandoh served as the research editor for the Temple International and Comparative Law Journal. He also interned as a judicial clerk for the Honorable Dolores K. Sloviter of the U.S. Court of Appeals for the Third Circuit and the Honorable Jerome B. Simandle of the U.S. District Court for New Jersey.

After graduating from law school Mr. Gyandoh was employed as a judicial clerk for the Honorable Dennis Braithwaite of the Superior Court of New Jersey Appellate Division. Mr. Gyandoh is the author of “Foreign Evidence Gathering: What Obstacles Stand in the Way of Justice?” 15 Temp. Int’l & Comp. L.J. (2001) and “Incorporating the Principle of Co-Equal Branches into the European Constitution: Lessons to Be Learned from the United States” found in *Redefining Europe* (2005).

Mr. Gyandoh is licensed to practice in New Jersey and Pennsylvania.

LEAH HEIFETZ, an associate of the Firm, concentrates her practice on mergers and acquisition litigation and stockholder derivative litigation.

Prior to joining the firm, Ms. Heifetz was an associate at Mulholland & Knapp, LLP, where she concentrated her practice in commercial litigation. Before that, she served as a law clerk to the Hon. Cynthia S. Kern of the New York State Supreme Court, New York County.

* EDUCATION

Ms. Heifetz received her Bachelor of Arts in 2006 from the University of Pennsylvania with a major in Philosophy, Politics, and Economics. She received her law degree in 2009 from Columbia Law School.

* ADMISSIONS

Ms. Heifetz is licensed to practice law in New York, and has been admitted to practice before the United States District Courts for the Southern and Eastern Districts of New York.

* LANGUAGES

Ms. Heifetz is fluent in Russian and conversant in Spanish and Hebrew.

SUFEI HU, a staff attorney of the Firm, received her J.D. from Villanova University School of Law, where she was a member of the Moot Court Board. Prior to joining the Firm, Ms. Hu worked in pharmaceutical, anti-trust, and securities law. Ms. Hu received her undergraduate degree from Haverford College in Political Science, with honors. She is licensed to practice law in Pennsylvania and New Jersey, and is admitted to the United States District Court of the Eastern District of Pennsylvania. She concentrates her practice in the area of securities litigation.

SAMANTHA E. JONES, an associate of the Firm, received her Juris Doctor from Temple University Beasley School of Law in 2011. While at Temple, Ms. Jones was the president of the Moot Court Honor Society and a member of Temple’s Trial Team. Upon graduating from Temple, Ms. Jones was awarded the Philadelphia Trial Lawyers Association James A. Manderino Award. Ms. Jones received her undergraduate degrees in Political Science and Spanish from The Pennsylvania State University in 2007. Ms. Jones is licensed to practice in Pennsylvania and New Jersey. She concentrates her practice in the ERISA department of the Firm.

JENNIFER L. JOOST, an associate in the Firm’s San Francisco office, received her law degree, cum laude, from Temple University Beasley School of Law, where she was the Special Projects Editor for the *Temple International and Comparative Law Journal*. Ms. Joost earned her undergraduate degree in History, with honors, from Washington University in St. Louis in 2003. She is licensed to practice in Pennsylvania and New Jersey and admitted to practice before the United States Courts of Appeals for the Second, Fourth, Ninth, and Eleventh Circuits, and the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey. She concentrates her practice at Kessler Topaz in the area of securities litigation.

Ms. Joost has served as an associate on the following matters: *In re Wireless Facilities, Inc.*, No. 04-CV-1589-JAH (NLS) (S.D. Cal.) and *In re ProQuest Inc. Securities Litigation*, No. 2:06-cv-10619 (E.D. Mich.). Additionally, she is currently serving as an associate on the following matters: *In re UBS*

AG Securities Litigation, No. 1:07-cv-11225-RJS, currently pending in the United States District Court for the Southern District of New York; *Luther, et al. v. Countrywide Financial Corp.*, No. BC 380698, currently pending in the Superior Court of the State of California, County of Los Angeles; and *In re Citigroup, Inc. Bond Litig.*, No. 08 Civ. 9522 (SHS), currently pending in the United States District Court for the Southern District of New York.

STACEY KAPLAN, an associate in the Firm's San Francisco office, received her Bachelor of Business Administration from the University of Notre Dame in 2002, with majors in Finance and Philosophy. Ms. Kaplan received her J.D. from the University of California at Los Angeles School of Law in 2005.

During law school, Ms. Kaplan served as a Judicial Extern to the Honorable Terry J. Hatter, Jr., United States District Court, Central District of California. Prior to joining the firm, Ms. Kaplan was an associate with Robbins Geller Rudman & Dowd LLP in San Diego, California.

Ms. Kaplan concentrates her practice on prosecuting securities class actions. She is admitted to the California Bar and is licensed to practice in all California state courts, as well as the United States District Courts for the Northern and Central Districts of California.

D. SEAMUS KASKELA, an associate of the Firm, received his B.S. in Sociology from Saint Joseph's University, his M.B.A. from The Pennsylvania State University, and his law degree from Rutgers School of Law – Camden. Mr. Kaskela is licensed to practice law in Pennsylvania and New Jersey, and is admitted to practice before the United States District Court for the Eastern District of Pennsylvania and the United States District Court for the District of New Jersey. Mr. Kaskela works in the Firm's case development department.

JOHN Q. KERRIGAN, an associate of the Firm, received his J.D. in 2007 from the Temple University Beasley School of Law. Before joining the firm in 2009, he was an associate in the litigation department of Curtin and Heefner LLP in Morrisville, Pennsylvania. Mr. Kerrigan graduated Phi Beta Kappa from Johns Hopkins University and received an MA in English from Georgetown University. He is licensed to practice law in Pennsylvania and New Jersey and concentrates his practice in the areas of mergers and acquisitions and shareholder derivative actions.

TOD A. KUPSTAS, an associate of the Firm, concentrates his practice in the field of Intellectual Property Litigation. Mr. Kupstas is a graduate of the University of Pennsylvania where he earned degrees in Physics and Anthropology. He earned his law degree from the top IP law ranked George Washington University School of Law. He is licensed to practice in Pennsylvania and before the United States Patent and Trademark Office.

Mr. Kupstas started his career at the United States Patent and Trademark Office where he examined patent applications to determine if they met legal standards. He focused on optic and computer networking systems technologies. While there, he received outstanding performance, special achievement and productivity awards.

Since being in private practice, Mr. Kupstas has handled matters in a variety of technological fields, including mechanical devices, electrical devices, green technology, complex systems, software, advanced physics and material science. He has represented clients in all matters of Intellectual Property, including patent litigation, patent prosecution, trademark matters and copyright. Before joining the Firm, Mr. Kupstas practiced at an Intellectual Property boutique and T Wolf Block Schorr Solis-Cohen.

MEREDITH LAMBERT, an associate of the Firm, received her law degree in 2010 from Temple University Beasley School of Law, where she was an Associate Editor for the Temple International and Comparative Law Journal. Ms. Lambert earned a Bachelors of Arts degree in History and a Certificate of Proficiency in Spanish Language and Culture from Princeton University in 2006. While a law student,

Ms. Lambert served as Judicial Extern to the Honorable Judge Leonard P. Stark of the U.S. District Court for the District of Delaware. Ms. Lambert is licensed to practice in Pennsylvania and concentrates her practice in the area of securities litigation.

JOSHUA A. LEVIN, a staff attorney at the Firm, and concentrates his practice in the area of securities litigation. Prior to joining Kessler Topaz, he worked in pharmaceutical litigation.

* Education

Law degree in 2006 from Widener University School of Law. While attending law school, he interned with the Mediation Unit of the Philadelphia Office of Attorney General, Bureau of Consumer Protection.

Mr. Levin earned his undergraduate degree in 2002 from The Pennsylvania State University, with a Bachelor of Science in Crime, Law and Justice and minors in Sociology and Law & Liberal Arts.

* Admissions

Pennsylvania
New Jersey

JAMES A. MARO, JR., an associate of the Firm, received his law degree from the Villanova University School of Law. He received a B.A. in Political Science from the Johns Hopkins University. Mr. Maro is licensed to practice law in Commonwealth of Pennsylvania and New Jersey. He is admitted to practice in the United States Court of Appeals for the Third Circuit and the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey.

Mr. Maro concentrates his practice in the Firm's case development department. He also has experience in the areas of consumer protection, ERISA, mergers and acquisitions, and shareholder derivative actions.

MEGAN MARTINO, a staff attorney at the Firm, concentrates her practice in the area of securities litigation.

* Education

2001—B.A.—West Virginia University
2006—J.D.—University of the District of Columbia David A. Clarke School of Law

* Admissions

District of Columbia
Maryland

JOSHUA A. MATERESE, an associate of the Firm, received his Juris Doctor from Temple University Beasley School of Law in 2012, graduating *cum laude*. He received his undergraduate degree from the Syracuse University Newhouse School of Communications. While attending Temple, Mr. Materese was a member of the Moot Court Honor Society and was the President of the Justinian Society. Mr. Materese is licensed to practice in Pennsylvania. He concentrates his practice in the area of securities litigation.

KATRICE TAYLOR MATHURIN, a staff attorney of the Firm, received her law degree from the University of Richmond School of Law. She received her undergraduate degree from The Johns Hopkins University. During law school, Ms. Mathurin practiced as an intern in the office of the United States Attorney for the Eastern District of Virginia, where she represented the United States in matters before the District Court. She also practiced in the University of Richmond Children's Law Center Disability Clinic. Prior to joining Kessler Topaz, Ms. Mathurin practiced in the areas of real estate and construction litigation. Ms. Mathurin is licensed to practice law in Pennsylvania and concentrates in the area of securities litigation.

JOHN J. McCULLOUGH, a staff attorney at the Firm, concentrates his practice in the area of securities litigation. In 2012, Mr. McCullough passed the CPA Exam.

* Education

1998, Temple University School of Law, J.D.

1994, Temple University, B.A.

* Admissions

Pennsylvania

* Clerkships

Justice Ronald D. Castille, Supreme Court of Pennsylvania, 1998-1999

Judge Harvey Bartle III, United States District Court for the Eastern District of Pennsylvania (internship during law school), 1997-1998

PATRICK J. MATTUCCI, a staff attorney at the Firm, received his law degree from the University of Pennsylvania Law School, and his undergraduate degree in History from Yale University. Mr. Mattucci is licensed to practice law in Pennsylvania, and concentrates his practice in the area of securities litigation.

DAVID E. MILLER, a staff attorney of the Firm, received his law degree from the Villanova School of Law, where he was an Associate Editor of the Villanova Sports and Entertainment Journal. Mr. Miller received his undergraduate degree, from Franklin and Marshall College, with a B.A. in Biological Foundations of Behavior, with a concentration in Neuroscience. Prior to joining Kessler Topaz, he worked in both pharmaceutical and construction litigation.

Mr. Miller is licensed to practice law in the Commonwealth of Pennsylvania and the State of New Jersey, and concentrates his practice in mergers and acquisition litigation and stockholder derivative litigation.

JAMES H. MILLER, an associate of the Firm, received his J.D. in 2005 from Villanova University School of Law, where he was enrolled in Villanova University's JD/MBA program. Mr. Miller received his Master of Business Administration from Villanova University in 2005, and received his Bachelor of Chemical Engineering from Villanova University in 2002. Mr. Miller is licensed to practice law in Pennsylvania and concentrates his practice in the areas of mergers and acquisitions and shareholder derivative actions.

KRYSTN E. MUNDY, a staff attorney of the Firm, received her law degree from the University of Miami School of Law and her undergraduate degree in Political Science and Spanish, cum laude, from Mount Saint Mary's University.

Prior to joining Kessler Topaz, Ms. Mundy practiced employment law and was in-house counsel at Philadelphia Corporation for Aging. Ms. Mundy is licensed to practice law in Pennsylvania and Nevada and is admitted to practice in the United States District Court for the Eastern District of Pennsylvania. She now concentrates her practice in the area of securities litigation.

CASANDRA A. MURPHY, an associate of the Firm, received her law degree from Widener University School of Law and her undergraduate from Gettysburg College. Prior to joining Kessler Topaz, Ms. Murphy was an associate at Post & Schell, P.C. where she practiced general casualty litigation. Ms. Murphy is licensed to practice in Pennsylvania and New Jersey, and has been admitted to practice before the United State District Court for the Eastern District of Pennsylvania. Ms. Murphy has lectured for the Pennsylvania Bar Institute and the Philadelphia Judicial Conference. She concentrates her practice in the areas of consumer protection, ERISA, pharmaceutical pricing and antitrust litigation.

JONATHAN F. NEUMANN, an associate with the Firm, concentrates his practice in the area of securities litigation. Prior to joining the Firm, Mr. Neumann served as a law clerk to the Honorable Douglas E. Arpert of the United States District Court for the District of New Jersey.

* Education

JD, Temple University Beasley School of Law

- Research Editor, Temple International and Comparative Law Journal
- Moot Court Honor Society

B.A., with honors, University of Delaware

* Admissions

- New Jersey

* Clerkship

- Hon. Douglas E. Arpert, United States District Court for the District of New Jersey

* Languages

- Spanish

MICHELLE M. NEWCOMER, an associate of the Firm, received her law degree from Villanova University School of Law in 2005. Ms. Newcomer received her undergraduate degrees in Finance and Art History from Loyola College in Maryland in 2002. Throughout her legal career, Ms. Newcomer has concentrated her practice in the area of securities litigation, representing individual and institutional investors and helping them to recover millions against corporate and executive defendants for violations of the federal securities laws. In this respect, Ms. Newcomer helped secure the following recoveries for investors: *In re Tenet Healthcare Corp. Sec. Litig.*, No. 02-8462 (C.D. Cal.) (settled – \$281.5 million); *In re Acclaim Entertainment, Inc. Sec. Litig.*, No. 2:03-CV-1270 (JS) (ETB) (E.D.N.Y.) (settled – \$13.65 million); *In re Zale Corp. Sec. Litig.*, No. 3:06-CV-01470-N (settled – \$5.9 million); and *In re Leadis Tech., Inc. Sec. Litig.*, No. C-05-0882-CRB (N.D. Cal.) (settled – \$4.2 million). Ms. Newcomer is also currently involved in several high profile securities fraud suits, including: *In re Lehman Brothers Sec. & ERISA Litig.*, No. 09 MD 2017 (LAK) (S.D.N.Y.) and *In re SemGroup Energy Partners, L.P. Sec. Litig.*, No. 08-MD-1989-GFK-FHM (N.D. Olka.).

Ms. Newcomer is licensed to practice law in the Commonwealth of Pennsylvania and the State of New Jersey and has been admitted to practice before the Supreme Court of the United States, the United States Court of Appeals for the Ninth and Tenth Circuits, and the United States District Court for the District of New Jersey.

MARGARET E. ONASCH, an associate of the Firm, received her law degree, cum laude, from Temple University Beasley School of Law. While at Temple, Ms. Onasch was a Beasley Scholar and a staff editor for the Temple Journal of Science, Technology, and Environmental Law. Ms. Onasch earned her undergraduate degree with honors in Sociology and Spanish from Franklin and Marshall College in 2007. During law school, Ms. Onasch served as a judicial intern to the Honorable Glynnis D. Hill of the Philadelphia Court of Common Pleas. Ms. Onasch is licensed to practice in Pennsylvania and New Jersey. She concentrates her practice in the area of securities litigation.

WILLIAM F. O'SHEA, III, a staff attorney of the Firm, received his law degree from the Villanova University School of Law in 1998 and received his undergraduate degree in English from Villanova University in 1991. During law school, Mr. O'Shea was a member of the Northeast Regional Champion team in the Philip C. Jessup International Moot Court Competition.

Prior to joining the Firm, Mr. O'Shea practiced in the areas of commercial litigation and business transactions, representing a broad range of clients, including individuals, entrepreneurs, financial institutions, Fortune 500 corporations and major league sports teams, and has experience dealing with various municipal, state, federal and international governmental entities and regulatory agencies. Mr. O'Shea is licensed to practice law in Pennsylvania and New Jersey, and has been admitted to practice before the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey. Mr. O'Shea concentrates his practice in the area of securities litigation.

JENNA M. PELLECCCHIA, an associate of the Firm, received her law degree, cum laude, from Villanova University School of Law in 2010 and her undergraduate degrees in Physics and Mathematics from Duke University in 2007. Ms. Pellecchia is licensed to practice law in Pennsylvania and New Jersey. She concentrates her practice in the areas of Intellectual Property law and Patent Litigation.

JUSTIN O. RELIFORD, an associate of the Firm, concentrates his practice on mergers and acquisition litigation and shareholder derivative litigation. Mr. Reliford graduated from the University of Pennsylvania Law School in 2007. While earning his J.D., Mr. Reliford was a member of the University of Pennsylvania Mock Trial Team and a member of the Keedy Cup Moot Court Board. Mr. Reliford received his B.A. from Williams College in 2003, majoring in Psychology with a concentration in Leadership Studies. Prior to joining the firm, Mr. Reliford was an associate in the labor and employment practice group of Morgan Lewis & Bockius, LLP. There, Mr. Reliford concentrated his practice on employee benefits, fiduciary, and workplace discrimination litigation. Mr. Reliford has extensive experience representing clients in connection with nationwide class and collective actions.

Mr. Reliford is a member of the Pennsylvania and New Jersey bars, and he is admitted to practice in the Third Circuit Court of Appeals, the Eastern District of Pennsylvania, and the District of New Jersey.

KRISTEN L. ROSS, an associate of the Firm, concentrates her practice in shareholder derivative actions. Ms. Ross received her J.D., with honors, from the George Washington University Law School, and B.A., *magna cum laude*, from Saint Joseph's University, with a major in Economics and minors in International Relations and Business.

Ms. Ross is licensed to practice law in Pennsylvania and New Jersey, and has been admitted to practice before the United States District Courts for the District of New Jersey and the Eastern District of Pennsylvania. Prior to joining Kessler Topaz, Ms. Ross was an associate at Ballard Spahr LLP, where she focused her practice in commercial litigation, particularly foreclosure and bankruptcy proceedings. She also has experience in commercial real estate transactions. During law school, Ms. Ross served as an intern with the United States Attorney's Office for the Eastern District of Pennsylvania.

ALLYSON M. ROSSEEL, a staff attorney of the Firm, received her law degree from Widener University School of Law. She earned her B.A. in Political Science from Widener University and is licensed to practice law in Pennsylvania and New Jersey.

Prior to joining the Firm, Ms. Rosseel was employed as general counsel for a boutique insurance consultancy/brokerage focused on life insurance sales, premium finance and structured settlements. She concentrates her practice at Kessler Topaz in the area of securities litigation.

RICHARD A. RUSSO, JR., an associate of the Firm, received his law degree, cum laude, from the Temple University Beasley School of Law, where he was a member of the Temple Law Review. Mr. Russo received his Bachelor of Science in Business Administration, cum laude, from Villanova University. He is licensed to practice law in Pennsylvania and New Jersey, and is admitted to practice before the United States Courts of Appeals for the First and Tenth Circuits. He concentrates his practice at Kessler Topaz in the area of securities litigation.

Mr. Russo recently helped secure a \$516 million recovery for investors in *In re Lehman Brothers Sec. & ERISA Litig.*, No. 09 MD 2017 (LAK), and is currently pursuing claims against Lehman Brothers' auditor in the United States District Court for the Southern District of New York. In addition, Mr. Russo currently serves as an associate on the following matters: *In re Bank of America Corp. Sec., Deriv. & ERISA Litig.*, No. 09 MD 2058 (PKC), pending in the United States District Court for the Southern District of New York; *In re Citigroup, Inc. Bond Litig.*, No. 08 Civ. 9522 (SHS), pending in the United States District Court for the Southern District of New York; *In re Heckmann Corp. Sec. Litig.*, No. 10 Civ. 00378-LPS-MPT, pending in the United States District Court for the District of Delaware; *Stratte-McClure v. Morgan Stanley*, No. 09 Civ. 2017 (DAB), pending in the United States District Court for the Southern District of New York; and *In re UBS AG Sec. Litig.*, No. 07 Civ.11225-RJS, pending in the United States District Court for the Southern District of New York.

JULIE SIEBERT-JOHNSON, an associate of the Firm, received her law degree from Villanova University School of Law in 2008. She graduated cum laude from the University of Pennsylvania in 2003. Ms. Siebert-Johnson is licensed to practice law in Pennsylvania and New Jersey. She concentrates her practice in the area of ERISA and consumer protection litigation.

MELISSA J. STARKS, a staff attorney at the Firm, concentrates her practice in the area of securities litigation.

* Education

2003—B.A.—Lincoln University

2006—J.D.—Temple University- Beasley School of Law

2008- LLM – Temple University -Beasley School of Law

* Admissions

Pennsylvania

MICHAEL P. STEINBRECHER, a staff attorney at the Firm, concentrates his practice in the area of securities litigation. Prior to joining Kessler Topaz he worked in pharmaceutical litigation.

* Education

Mr. Steinbrecher received his Bachelors of Arts in Marketing from Temple University in 1999 and earned his Juris Doctor from Temple University James E. Beasley School of Law in 2004.

* Admissions

Pennsylvania

New Jersey

MATTHEW T. STONE, an associate of the Firm, concentrates his practice in area of consumer protection litigation. Mr. Stone received his undergraduate degree from the University of Pennsylvania in 2003 and his law degree from Rutgers School of Law – Camden in 2007.

Following law school, Mr. Stone clerked for the Honorable Eduardo C. Robreno in the United States District Court for the Eastern District of Pennsylvania.

Mr. Stone is licensed to practice law in Pennsylvania, New Jersey and the District of Columbia, and is admitted to practice in the United States Court of Appeals for the Third Circuit, the Eastern District of Pennsylvania and the District of New Jersey.

Prior to joining Kessler Topaz, Mr. Stone practiced with the firm of Cohen Placitella & Roth, P.C. in the fields of complex litigation and medical malpractice.

Mr. Stone has also been elected to the Executive Committee of the Young Lawyers Division for the Philadelphia Bar Association. He is also a pro-bono volunteer for the Eastern District of Pennsylvania's Prisoner Civil Rights Litigation panel.

Mr. Stone has been selected as a Pennsylvania Super Lawyers Rising Star, a distinction for no more than 2.5% of Pennsylvania lawyers under the age of 40, in 2012 and 2013.

JULIE SWERDLOFF, a staff attorney of the Firm, received her undergraduate degree in Real Estate and Business Law from The Pennsylvania State University and received her law degree from Widener University School of Law. While attending law school, she interned as a judicial clerk for the Honorable James R. Melinson of the United States District Court for the Eastern District of Pennsylvania. She is licensed to practice law in Pennsylvania and New Jersey and has been admitted to practice before the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey.

Prior to joining Kessler Topaz, Ms. Swerdloff managed environmental claims litigation for a Philadelphia-based insurance company and prior to that was an associate at a general practice firm in Montgomery County, PA. At Kessler Topaz, she has been involved in the Firm's derivative and securities class action cases, including the historic Tyco case (*In re Tyco International, Ltd. Sec. Lit.*, No. 02-1335-B (D.N.H. 2002) (settled -- \$3.2 billion)) and many options backdating cases. Currently she concentrates her practice in federal and state wage and hour litigation.

BRIAN W. THOMER, a staff attorney at the Firm, concentrates his practice in the area of securities litigation.

* Education

2005, Temple University Beasley School of Law, J.D.

2002, Widener University, B.S.

* Admissions

Pennsylvania

ALEXANDRA H. TOMICH, a staff attorney of the Firm, received her law degree from Temple Law School and her undergraduate degree, from Columbia University, with a B.A. in English. She is licensed to practice law in Pennsylvania.

Prior to joining Kessler Topaz, she worked as an associate at Trujillo, Rodriguez, and Richards, LLC in Philadelphia. Ms. Tomich volunteers as an advocate for children through the Support Center for Child Advocates in Philadelphia and at Philadelphia VIP. She concentrates her practice in the area of securities litigation.

AMANDA R. TRASK, an associate of the Firm, received her law degree from Harvard Law School and her undergraduate degree, cum laude, from Bryn Mawr College, with honors in Anthropology. She is licensed to practice law in Pennsylvania and has been admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

Prior to joining Kessler Topaz, she worked as an associate at a Philadelphia law firm where she represented defendants in consumer product litigation. Ms. Trask has served as an advocate for children with disabilities and their parents and taught special education law. She currently serves on the Board of the Bryn Mawr College Club of Philadelphia. She concentrates her practice in the areas of ERISA, consumer protection and stockholder derivative actions.

DAVE W. URIS, a staff attorney with the Firm, received his law degree from Santa Clara University School of Law, where he was the Technical Editor of the Santa Clara Law Review. Mr. Uris received his undergraduate degree from the University of California at Santa Barbara, with a B.A. in Law and Society.

Mr. Uris is licensed to practice law in the Commonwealth of Pennsylvania, the State of California, and the District of Columbia, and concentrates his practice in mergers and acquisitions litigation and stockholder derivative litigation.

JASON M. WARE, a staff attorney at the Firm, received his law degree from Villanova University School of Law. He received his Bachelor of Arts in English from Millersville University. Mr. Ware is licensed to practice law in the Commonwealth of Pennsylvania.

Prior to joining the Firm, Mr. Ware was a Legal Coordinator in the Jackson Cross Partners Advisory Services Group. He was responsible for the legal and title review of commercial real estate portfolios and abstraction of commercial leases. With the Firm, Mr. Ware concentrates his practice in the area of securities litigation.

ZAKIYA WASHINGTON, a staff attorney at the Firm, received her law degree from Temple University Beasley School of Law in Pennsylvania and her Bachelor of Science degree in Entrepreneurship from Hampton University in Virginia. Prior to joining Kessler Topaz, she worked in pharmaceutical and anti-trust litigation. She is licensed to practice law in the Commonwealth of Pennsylvania. Ms. Washington concentrates her practice in the area of securities litigation.

STACEY WAXMAN, a staff attorney at the Firm, received her undergraduate degree in Business Administration from George Washington University and received her law degree from Widener University School of Law. While in law school, she was a law clerk for a general practice firm in Bucks County. Prior to joining Kessler Topaz, she worked as an associate for a Bucks County law firm. Ms. Waxman is licensed to practice in Pennsylvania, and she concentrates her practice in the area of securities litigation.

KURT WEILER, a staff attorney of the Firm, received his law degree from Duquesne University School of Law, where he was a member of the Moot Court Board and McArdle Wall Honoree. He received his undergraduate degree from the University of Pennsylvania.

Prior to joining Kessler Topaz, Mr. Weiler was associate corporate counsel for a Philadelphia-based mortgage company, where he specialized in the area of foreclosures and bankruptcy. Mr. Weiler is licensed to practice law in Pennsylvania and currently concentrates his practice in the area of securities litigation.

DIANA J. ZINSER, a staff attorney of the Firm, received her J.D. from Temple University Beasley School of Law in 2006. She received her B.A., *cum laude*, in political science with a minor in economics from Saint Joseph's University in 2003 and was a member of the Phi Beta Kappa honor society.

Prior to joining the firm, Ms. Zinser was a project attorney at Pepper Hamilton LLP in Philadelphia, where she worked in the health effects litigation practice group. Ms. Zinser is licensed to practice law in Pennsylvania, and concentrates her practice in the area of consumer protection, ERISA, pharmaceutical pricing and antitrust litigation.

COUNSEL

IOANA A. BROOKS, Counsel in the Firm's San Francisco office, received her law degree from the University of San Francisco School of Law. She received her Bachelor of Science in Economics from Duke University. Ms. Brooks is licensed to practice law in California and concentrates her practice in the area of securities litigation.

DONNA SIEGEL MOFFA, Counsel to the Firm, received her law degree, with honors, from Georgetown University Law Center in May 1982. She received her undergraduate degree, cum laude, from Mount Holyoke College in Massachusetts. Ms. Siegel Moffa is admitted to practice before the Third Circuit Court of Appeals, the United States Courts for the District of New Jersey and the District of Columbia, as well as the Supreme Court of New Jersey and the District of Columbia Court of Appeals. Prior to joining the firm, Ms. Siegel Moffa was a member of the law firm of Trujillo, Rodriguez & Richards, LLC, where she litigated, and served as co-lead counsel, in complex class actions arising under federal and state consumer protection statutes, lending laws and laws governing contracts and employee compensation. Prior to entering private practice, Ms. Siegel Moffa worked at both the Federal Energy Regulatory Commission (FERC) and the Federal Trade Commission (FTC). At the FTC, she prosecuted cases involving allegations of deceptive and unsubstantiated advertising. In addition, both at FERC and the FTC, Ms. Siegel Moffa was involved in a wide range of administrative and regulatory issues including labeling and marketing claims, compliance, FOIA and disclosure obligations, employment matters, licensing and rulemaking proceedings.

Ms. Siegel Moffa continues to concentrate her practice in the area of consumer protection litigation. She served as co-lead counsel for the class in *Robinson v. Thorn Americas, Inc.*, L-03697-94 (Law Div. 1995), a case that resulted in a significant monetary recovery for consumers and changes to rent-to-own contracts in New Jersey. Ms. Siegel Moffa was also counsel in *Muhammad v. County Bank of Rehoboth Beach, Delaware*, 189 N.J. 1 (2006), U.S. Sup. Ct. cert. denied, 127 S. Ct. 2032(2007), in which the New Jersey Supreme Court struck a class action ban in a consumer arbitration contract. She has served as class counsel representing consumers pressing TILA claims, e.g. *Cannon v. Cherry Hill Toyota, Inc.*, 184 F.R.D. 540 (D.N.J. 1999), and *Dal Ponte v. Am. Mortg. Express Corp.*, CV- 04-2152 (D.N.J. 2006), and has pursued a wide variety of claims that impact consumers and individuals including those involving predatory and sub-prime lending, mandatory arbitration clauses, price fixing, improper medical billing practices, the marketing of light cigarettes and employee compensation. Ms. Siegel Moffa's practice has involved significant appellate work representing individuals, classes, and non-profit organizations participating as amicus curiae, such as the National Consumer Law Center and the AARP. In addition, Ms. Siegel Moffa has regularly addressed consumer protection and litigation issues in presentations to organizations and professional associations. Ms. Siegel Moffa is a member of the Pennsylvania Bar Association, the New Jersey State Bar Association, the Camden County Bar Association, the District of Columbia Bar Association, the National Association of Consumer Advocates and the Public Justice Foundation.

DANIEL C. MULVENY, Counsel to the Firm, received his law degree, with honors, from the Dickinson School of Law of the Pennsylvania State University. He received his bachelor of science degree in Chemical Engineering from the University of Delaware.

Mr. Mulveny brings to the Firm over 10 years of patent litigation experience in a variety of technologies including generic pharmaceutical litigation under the Hatch-Waxman Act, semiconductor manufacturing, magnetic recording media, catalysts, and automotive coatings. Prior to joining the Firm, Mr. Mulveny was a member of the law firm of Novak Druce Connolly Bove + Quigg, LLP in their Wilmington, Delaware office where he was a lead attorney in defending Pfizer's blockbuster cholesterol drug Lipitor® from multiple generic challenges.

Mr. Mulveny is a former federal judicial clerk for the Honorable Thomas J. Rueter of the United States District Court for the Eastern District of Pennsylvania in Philadelphia, PA.

Mr. Mulveny is licensed to practice in Delaware, Pennsylvania, and the United States Patent and Trademark Office. He is also admitted to practice before the United States District Courts for the District of Delaware, the Eastern District of Pennsylvania, and the District of Colorado and the United States Court of Appeals for the Federal Circuit. Mr. Mulveny concentrates his practice in the areas of Intellectual Property law and Patent Litigation.

CONSULTANTS

DAVID RABBINER serves as Kessler Topaz's Director of Investigative Services and leads investigations necessary to further and strengthen the Firm's class action litigation efforts. Although his investigative services are primarily devoted to securities matters, Mr. Rabbiner routinely provides litigation support, conducts due diligence, and lends general investigative expertise and assistance to the Firm's other class action practice areas. Mr. Rabbiner plays an integral role on the Firm's legal team, providing critical investigative services to obtain evidence and information to help ensure a successful litigation outcome. Before joining Kessler Topaz, Mr. Rabbiner enjoyed a broad based, successful career as an FBI Special Agent, including service as an Assistant Special Agent in Charge, overseeing multiple criminal programs, in one of the Bureau's largest field offices. He holds an A.B. in English Language and Literature from the University of Michigan and a Juris Doctor from the University of Miami School of Law.