

**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
jmiller@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

**~~PROPOSED~~ ORDER PRELIMINARILY
APPROVING SETTLEMENT AND
PROVIDING FOR NOTICE
AS MODIFIED BY THE COURT**

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

1
2 WHEREAS, Plaintiff has made an application for an order (i) preliminarily approving the
3 settlement of the above-captioned action (the “Action”), in accordance with the Stipulation of
4 Settlement dated January 16, 2014 (the “Stipulation” or “Settlement”), which, together with the
5 exhibits annexed thereto, sets forth the terms and conditions of a proposed Settlement and dismissal
6 of the Action with prejudice, upon the terms and conditions set forth therein; and (ii) approving
7 distribution of the Notice of Proposed Settlement (attached to the Stipulation as Exhibit B);

8 WHEREAS, Defendants consent to the entry of this Order;

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

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

12 NOW, THEREFORE, IT IS HEREBY ORDERED:

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

16 2. For purposes of the Settlement only, and pending the Settlement Hearing (defined
17 below), the Action is provisionally certified as a mandatory non-opt-out class action pursuant to
18 Federal Rules of Civil Procedure 23(a), 23(b)(1) and 23(b)(2), on behalf of a class consisting of all
19 persons and entities that held common stock in Abaxis as of the close of business on August 31,
20 2012, which represents the record date for the shareholders entitled to vote at Abaxis’s October 24,
21 2012 Annual Meeting (excluding the Individual Defendants, members of the immediate family of
22 any Individual Defendant, and any person, firm, trust, corporation, or other entity related to, or
23 affiliated with, any Individual Defendant (“Excluded Persons”), and the legal representatives, heirs,
24 successors or assigns of any such Excluded Person) (the “Class”). For purposes of the Settlement
25 only, Plaintiff St. Louis Police Retirement System shall be certified as the representative of the
26 Class.
27
28

1 3. A hearing (the “Settlement Hearing”) shall be held before this Court on June 17,
2 2014, at 2:00 p.m., at the Oakland Courthouse, Courtroom 1, 4th 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, as revised by the parties) and the “Press Release Notice” submitted to the Court. The
10 Court further finds that the distribution of the Notice and Press Release Notice substantially in the
11 manner and form as set forth in the Stipulation and in Paragraph 5 of this order meets the
12 requirements of due process and all other applicable laws, is the best notice practicable under the
13 circumstances, and shall constitute due and sufficient notice of the matters set forth therein for all
14 purposes to all Persons entitled to such notice.

15 5. Not later than ten (10) calendar days following entry of this Order, Abaxis shall
16 disseminate the Notice to Abaxis shareholders by causing (1) the Notice to be filed with the United
17 States Securities and Exchange Commission on Form 8-K and (2) the Press Release Notice to be to
18 be issued in a national newswire, such as Business Wire, and posted on the Company’s website.

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

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

24 8. Pending final determination of whether the Settlement should be approved, no
25 Abaxis shareholders, either directly, representatively, derivatively, or in any other capacity, shall
26 commence or prosecute against any of the Defendants, any action or proceeding in any court or
27 tribunal asserting any of the Released Claims.
28

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

4 10. All papers in opposition to the Settlement, including Defendants' Counsel's
5 opposition to Plaintiff's Counsel's application for a Fee Award, shall be filed with the Court and
6 served at least twenty-one (21) calendar days prior to the Settlement Hearing.

7 11. Plaintiff's Counsel's reply brief, if any, shall be filed with the Court and served at
8 least fourteen (14) days prior to the Settlement Hearing.

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

27 Eric L. Zagar
28 KESSLER TOPAZ MELTZER & CHECK, LLP
 280 King of Prussia Road

1 Radnor, PA 19087

2 Jonathan M. Stein
3 SAXENA WHITE, P.A.
4 2424 N. Federal Highway, Suite 257
5 Boca Raton, FL 33431

Counsel for Plaintiff St. Louis Retirement System

6 and

7 Thad A. Davis
8 GIBSON, DUNN & CRUTCHER LLP
9 555 Mission Street, Suite 3000
10 San Francisco, CA 94105

Counsel for Individual Defendants

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

13 CLERK OF THE COURT
14 Oakland Courthouse
15 1301 Clay Street
16 Oakland, CA 94612

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

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

14. All proceedings in the Action, other than as may be necessary to carry out the terms
and conditions of the Settlement, are hereby stayed and suspended pending final determination of

1 whether the Settlement provided for in the Stipulation shall be approved. Plaintiff and Abaxis
2 shareholders, or any them, are hereby barred and enjoined from commencing, prosecuting,
3 instigating, continuing, or in any way participating in the commencement or prosecution of any
4 action, in any forum, asserting any Released Claims against any of the Released Persons.

5 15. The Court reserves the right to adjourn the date of the Settlement Hearing or modify
6 any other dates set forth herein without further notice to the Abaxis shareholders, and, subject to the
7 terms of the Final Order and Judgment, retains jurisdiction for a period of one year from entry of
8 judgment to consider all further applications arising out of or connected with the Settlement.

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

11 IT IS SO ORDERED.

12
13 DATED: April 15, 2014


14 HONORABLE YVONNE GONZALEZ ROGERS
15 U.S. DISTRICT COURT JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28