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FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

E-FILED 11-09-2010

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ABAXIS, INC.,

Plaintiff-Counterdefendant,

v.

CEPHEID,

Defendant-Counterclaimant.

Case No. C 10-2840 LHK
**STIPULATED ~~PROPOSED~~
PROTECTIVE ORDER**

(MODIFIED BY THE COURT)

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards

1 that will be applied when a party seeks permission from the Court to file material under seal.

2 2. DEFINITIONS

3 2.1 Party: any party to this action, including all of its officers, directors,
4 employees, consultants, retained experts, and outside counsel (and their support staff).

5 2.2 Disclosure or Discovery Material: all items or information, regardless of
6 the medium or manner generated, stored, or maintained (including, among other things,
7 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
8 responses to discovery in this matter.

9 2.3 “Confidential” Information or Items: information (regardless of how
10 generated, stored, or maintained) or tangible things that qualify for protection under standards
11 developed under Fed. R. Civ. P. 26(c), including information that a Designating Party believes to
12 be of a proprietary business or technical nature and not readily available to competitors, potential
13 competitors, and/or other third parties.

14 2.4 “Highly Confidential—Attorneys’ Eyes Only” Information or Items:
15 extremely sensitive “Confidential” information or items the disclosure of which would create a
16 substantial risk of serious injury that could not be avoided by less restrictive means. Such
17 information may fall into one or more of the following categories: business plans, business
18 development, product development, product designs, engineering information, product
19 specifications, software, trade secrets, market analysis, competitor analysis, customer
20 information, vendor information, internal financial/accounting information, operations
21 information, production information, distributor agreements, license agreements, development
22 agreements, sales agreements, pricing information, cost information, and business relationships
23 with third parties.

24 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
25 from a Producing Party.

26 2.6 Producing Party: a Party or non-party that produces Disclosure or
27 Discovery Material in this action.

28 2.7 Designating Party: a Party or non-party that designates information or

1 items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly
2 Confidential—Attorneys’ Eyes Only.”

3 2.8 Protected Material: any Disclosure or Discovery Material that is
4 designated as “Confidential” or as “Highly Confidential—Attorneys’ Eyes Only.”

5 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
6 retained to represent or advise a Party in this action.

7 2.10 House Counsel: attorneys who are employees of a Party or of a corporate
8 parent owning 100% of a Party.

9 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well
10 as their support staffs).

11 2.12 Expert: a person with specialized knowledge or experience in a matter
12 pertinent to the litigation who has been retained by a Party or its Counsel to serve as an expert
13 witness or as a consultant in this action and who is not a past or a current employee of a Party or
14 of a competitor of a Party and who, at the time of retention, is not anticipated to become an
15 employee of a Party or a competitor of a Party. This definition includes a professional jury or
16 trial consultant retained in connection with this litigation.

17 2.13 Professional Vendors: persons or entities that provide litigation support
18 services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or demonstrations;
19 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
20 subcontractors.

21 3. SCOPE

22 The protections conferred by this Stipulation and Order cover not only Protected
23 Material (as defined above), but also any information copied or extracted therefrom, as well as
24 all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or
25 presentations by parties or counsel to or in court or in other settings that might reveal Protected
26 Material.

27 4. DURATION

28 Even after final disposition of this litigation, the confidentiality obligations

1 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing
2 or a court order otherwise directs. **For a period of six months after the final disposition of this
3 action, this court will retain jurisdiction to enforce the terms of this order.**

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for Protection.

6 Each Party or non-party that designates information or items for protection under this Order must
7 take care to limit any such designation to specific material that qualifies under the appropriate
8 standards. A Designating Party must take care to designate for protection only those parts of
9 material, documents, items, or oral or written communications that qualify—so that other portions
10 of the material, documents, items, or communications for which protection is not warranted are
11 not swept unjustifiably within the ambit of this Order.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations that
13 are shown to be clearly unjustified, or that have been made for an improper purpose (*e.g.*, to
14 unnecessarily encumber or retard the case development process, or to impose unnecessary
15 expenses and burdens on other parties), expose the Designating Party to sanctions.

16 If it comes to a Party's or a non-party's attention that information or items that it
17 designated for protection do not qualify for protection at all, or do not qualify for the level of
18 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
19 withdrawing the mistaken designation.

20 5.2 Manner and Timing of Designations. Except as otherwise provided in this
21 Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
22 material that qualifies for protection under this Order must be clearly so designated before the
23 material is disclosed or produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (apart from transcripts of
26 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
27 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY" on each
28 page that contains protected material. If only a portion or portions of the material on a page
qualifies for protection, the Producing Party also must clearly identify the protected portion(s)

1 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the
2 level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—
3 ATTORNEYS’ EYES ONLY”).

4 A Party or Non-Party that makes original documents or materials available for
5 inspection need not designate them for protection until after the inspecting Party has indicated
6 which material it would like copied and produced. During the inspection and before the
7 designation, all of the material made available for inspection shall be deemed “HIGHLY
8 CONFIDENTIAL — ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the
9 documents it wants copied and produced, the Producing Party must determine which documents,
10 or portions thereof, qualify for protection under this Order, and then, before producing the
11 specified documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL”
12 or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY”) on each page that contains
13 Protected Material. If only a portion or portions of the material on a page qualifies for protection,
14 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
15 appropriate markings in the margins) and must specify, for each portion, the level of protection
16 being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’
17 EYES ONLY.”

18 (b) for testimony given in deposition or in other pretrial or trial
19 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the
20 record, before the close of the deposition, hearing, or other proceeding, all protected testimony,
21 and specify any portions of the testimony that qualify as “CONFIDENTIAL” or “HIGHLY
22 CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” Alternatively, the Party or non-party
23 offering or sponsoring testimony, may designate portions of the testimony as
24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY” within 10
25 days from the receipt of the official transcript by the Party or non-party and provide its
26 designation in writing to all other Parties. Until the expiration of the 10 day period, the entire
27 transcript shall be treated as “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”
28 Subsequently, only those portions of the testimony designated for protection within the 10 days

1 shall be covered by the provisions of this Stipulated Protective Order.

2 Transcript pages containing Protected Material must be separately bound by the
3 court reporter, who must affix on each such page the legend “CONFIDENTIAL” or “HIGHLY
4 CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-party
5 offering or sponsoring the witness or presenting the testimony.

6 (c) for information produced in some form other than documentary and
7 for any other tangible items, that the Producing Party affix in a prominent place on the exterior
8 of the container or containers in which the information or item is stored the legend
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” If only
10 portions of the information or item warrant protection, the Producing Party, to the extent
11 practicable, shall identify the protected portions, specifying whether they qualify as
12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
14 failure to designate qualified information or items as “CONFIDENTIAL” or “HIGHLY
15 CONFIDENTIAL—ATTORNEYS’ EYES ONLY” does not, standing alone, waive the
16 Designating Party’s right to secure protection under this Order for such material. If material is
17 appropriately designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—
18 ATTORNEYS’ EYES ONLY” after the material was initially produced, the Receiving Party, on
19 timely notification of the designation, must make reasonable efforts to assure that the material is
20 treated in accordance with the provisions of this Order.

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
23 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
24 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
25 waive its right to challenge a confidentiality designation by electing not to mount a challenge
26 promptly after the original designation is disclosed.

27 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
28 Designating Party’s confidentiality designation must do so in good faith and must begin the

1 process by conferring directly (in voice-to-voice dialogue; other forms of communication are not
2 sufficient) with Counsel for the Designating Party. In conferring, the challenging Party must
3 explain the basis for its belief that the confidentiality designation was not proper and must give
4 the Designating Party an opportunity to review the designated material, to reconsider the
5 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
6 designation. A challenging Party may proceed to the next stage of the challenge process only if it
7 has engaged in this meet and confer process first.

8 6.3 Judicial Intervention. A Party that elects to press a challenge to a
9 confidentiality designation after considering the justification offered by the Designating Party
10 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule
11 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the
12 challenge. Each such motion must be accompanied by a competent declaration that affirms that
13 the movant has complied with the meet and confer requirements imposed in the preceding
14 paragraph and that sets forth with specificity the justification for the confidentiality designation
15 that was given by the Designating Party in the meet and confer dialogue.

16 The burden of persuasion in any such challenge proceeding shall be on the
17 Designating Party. Until the Court rules on the challenge, all parties shall continue to afford the
18 material in question the level of protection to which it is entitled under the Producing Party's
19 designation.

20 7. ACCESS TO AND USE OF PROTECTED MATERIAL

21 7.1 Basic Principles. A Receiving Party may use Protected Material that is
22 disclosed or produced by another Party or by a non-party in connection with this case only for
23 prosecuting, defending, or attempting to settle this litigation, and for no other purpose.

24 Protected Material may be disclosed only to the categories of persons and under
25 the conditions described in this Order. When the litigation has been terminated, a Receiving
26 Party must comply with the provisions of section 13, below (FINAL DISPOSITION).

27 Protected Material must be stored and maintained by a Receiving Party at a
28 location and in a secure manner that ensures that access is limited to the persons authorized under

1 this Order.

2 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
3 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
4 disclose any information or item designated “CONFIDENTIAL” only to:

5 (a) the Receiving Party’s Outside Counsel of record in this action, as
6 well as employees of said Outside Counsel to whom it is reasonably necessary to disclose the
7 information for this litigation;

8 (b) the officers, directors, and employees (including House Counsel) of
9 the Receiving Party to whom disclosure is reasonably necessary for the Receiving Party’s
10 preparation and pursuit of claims and defenses in this litigation and who have signed the
11 “Agreement To Be Bound by Protective Order” (Exhibit A);

12 (c) Experts (as defined in this Order) of the Receiving Party (1) to
13 whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Agreement
14 To Be Bound by Protective Order” (Exhibit A), and (3) as to whom the procedures set forth in
15 Section 7.4, below, have been followed;

16 (d) the Court and its personnel;

17 (e) court reporters, their staffs, and professional vendors to whom
18 disclosure is reasonably necessary for this litigation;

19 (f) during their depositions, witnesses in the action to whom disclosure
20 is reasonably necessary and who have signed the “Agreement To Be Bound by Protective Order”
21 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
22 Protected Material must be separately bound by the court reporter and may not be disclosed to
23 anyone except as permitted under this Stipulated Protective Order.

24 (g) the author or indicated recipient of the information or item, or an
25 employee of the disclosing party or non-party.

26 7.3 Disclosure of “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES
27 ONLY” Information or Items. Unless otherwise ordered by the Court or permitted in writing by
28 the Designating Party, a Receiving Party may disclose any information or item designated

1 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” only to:

2 (a) the Receiving Party’s Outside Counsel of record in this action, as
3 well as employees of said Outside Counsel to whom it is reasonably necessary to disclose the
4 information for this litigation;

5 (b) the Receiving Party’s House Counsel, who will use the information
6 solely for assisting outside counsel in prosecuting, defending, or attempting to settle this
7 litigation, who will not reveal, share or discuss information or its contents with anyone involved
8 in competitive decision making and who will sign the “Agreement To Be Bound by Protective
9 Order” that is attached hereto as Exhibit A prior to obtaining information access,

10 (c) Experts (as defined in this Order) of the Receiving Party (1) to
11 whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Agreement
12 To Be Bound by Protective Order” (Exhibit A), and (3) as to whom the procedures set forth in
13 Section 7.4, below, have been followed;

14 (d) the court and its personnel;

15 (e) court reporters, their staffs, and professional vendors to whom
16 disclosure is reasonably necessary for this litigation; and

17 (f) the author or indicated recipient of the document, or an employee of
18 the disclosing party or non-party.

19 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
20 CONFIDENTIAL — ATTORNEYS’ EYES ONLY” Information or Items to Experts.

21 (a) Unless otherwise ordered by the Court or agreed in writing by the
22 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
23 information or item that has been designated “CONFIDENTIAL” or “HIGHLY
24 CONFIDENTIAL—ATTORNEYS’ EYES ONLY” first must make a written request to the
25 Designating Party that (1) sets forth the full name of the Expert and the city and state of his or
26 her primary residence, (2) attaches a copy of the Expert’s current curriculum vitae, (3) identifies
27 the Expert’s current and prior employer(s), (4) identifies each person or entity from whom the
28 Expert has received compensation for work in his or her areas of expertise or to whom the expert

1 has provided professional services at any time during the preceding three years¹, and (5)
2 identifies (by name and number of the case, filing date, and location of court) any litigation in
3 connection with which the Expert has provided any professional services during the preceding
4 five years.

5 (b) A Party that makes a request and provides the information specified
6 in the preceding paragraph may disclose the subject Protected Material to the identified Expert
7 unless, within six court days of delivering the request, the Party receives a written objection from
8 the Designating Party. Any such objection must set forth in detail the grounds on which it is
9 based.

10 (c) A Party that receives a timely written objection must meet and
11 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the
12 matter by agreement. If no agreement is reached, the Party seeking to make the disclosure to the
13 Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local
14 Rule 79-5, if applicable) seeking permission from the Court to do so. Any such motion must
15 describe the circumstances with specificity, set forth in detail the reasons for which the
16 disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure
17 would entail, and suggest any additional means that might be used to reduce that risk. In
18 addition, any such motion must be accompanied by a competent declaration in which the movant
19 describes the parties' efforts to resolve the matter by agreement (*i.e.*, the extent and the content
20 of the meet and confer discussions) and sets forth the reasons advanced by the Designating Party
21 for its refusal to approve the disclosure.

22 In any such proceeding, the Party opposing disclosure to the Expert shall bear the
23 burden of proving that the risk of harm that the disclosure would entail (under the safeguards
24 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

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27 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third- party, then the
28 Expert should provide whatever information the Expert believes can be disclosed without violating any
confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with
the Designating Party regarding any such engagement.

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8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” the Receiving Party must so notify the Designating Party, in writing (by e-mail, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material—and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement To Be Bound” that is attached hereto as Exhibit A.

1 10. FILING PROTECTED MATERIAL

2 Without written permission from the Designating Party or a court order secured
3 after appropriate notice to all interested persons, a Party may not file in the public record in this
4 action any Protected Material. A Party that seeks to file under seal any Protected Material must
5 comply with Civil Local Rule 79-5.

6 11. INFORMATION PROTECTED BY PRIVILEGE, WORK PRODUCT, OR
7 OTHER DOCTRINE

8 The inadvertent production of any document or other disclosure of Protected
9 Material which the Designating Party contends is subject to the attorney-client privilege, work-
10 product protection, or any other privilege or protection against discovery shall not necessarily be
11 deemed a waiver in whole or in part of the claim of privilege or protection, either as to the
12 specific document or the information disclosed or as to any other document or information
13 relating thereto. Within a reasonable time after the discovery of the inadvertent production, the
14 Designating Party shall give notice to the Receiving Party that privileged documents or
15 information have been inadvertently produced or disclosed and request the return of such
16 documents. Any document or portion of transcript, including all copies thereof, constituting or
17 containing information as to which notice of inadvertent production is given shall be returned to
18 the Designating Party within fifteen (15) days of such demand, unless the Receiving Party objects
19 to the claim of privilege. If the Receiving Party objects to the claim of privilege, the claim of
20 inadvertent production and/or the reasonableness of the notice given, the receiving party and the
21 Designating Party shall attempt to resolve the dispute. If the dispute is not resolved, the
22 Receiving Party may move the Court to compel the re-production of the document(s) at issue.
23 From the time of the Designating Party's notification of inadvertent production, any documents or
24 information as to which notice is given shall not be disclosed to anyone other than Outside
25 Counsel and shall not be used for any purpose other than the motion to compel re-production,
26 until the Court enters an order ruling otherwise, or until the Receiving Party and the Designating
27 Party otherwise agree.

28 12. LIMITS ON DISCOVERY OF EXPERT MATERIAL

1 Only expert reports exchanged between the parties and the information relied on by the
2 experts to form the opinions in the exchanged reports are discoverable. Attorney communications
3 to and from an expert, draft reports, and notes of experts, and other documents relating to
4 communications to or from attorneys do not need to be logged in a privilege log and are not
5 discoverable unless the expert has relied on such communication or document to form an opinion
6 stated in the expert’s exchanged report. Further, the substance of attorney communications with
7 an expert in preparation for the expert’s deposition or trial testimony are not discoverable unless
8 the expert has relied on the attorney communications to form an opinion stated in the deposition
9 or trial testimony.

10 13. FINAL DISPOSITION

11 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
12 after the final termination of this action, each Receiving Party must return all Protected Material
13 to the Producing Party or destroy it. As used in this subdivision, “all Protected Material” includes
14 all copies, abstracts, compilations, summaries, or any other form of reproducing or capturing any
15 Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party
16 must submit a written certification to the Producing Party (and, if not the same person or entity, to
17 the Designating Party) by the sixty day deadline that identifies (by general category, where
18 appropriate) all the Protected Material that was returned or destroyed and that affirms that the
19 Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of
20 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel
21 are entitled to retain an archival copy, in addition to the originals, of all pleadings, motion papers,
22 transcripts, legal memoranda, correspondence, or attorney work product, even if such materials
23 contain Protected Material. Any such archival copies that contain or constitute Protected Material
24 remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

25 14. MISCELLANEOUS

26 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
27 person to seek its modification by the Court in the future. Nothing in this Order shall be deemed
28 to preclude any Party from seeking and obtaining, on an appropriate showing, such additional

1 protection with respect to the confidentiality of these proceedings or specific documents or
2 testimony as that Party may deem appropriate.

3 14.2 Right to Assert Other Objections. By stipulating to the entry of this
4 Protective Order no Party waives any right it otherwise would have to object to disclosing or
5 producing any information or item on any ground not addressed in this Stipulated Protective
6 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
7 the material covered by this Protective Order.

8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9 DATED: October 27, 2010

/s/ Ricardo Rodriguez

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Attorney for Plaintiff-Counterdefendant
ABAXIS, INC.

16 DATED: November 8, 2010

/s/ Carolyn Change

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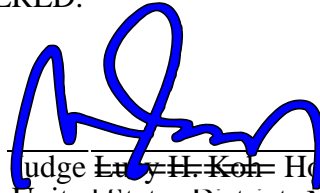
Attorneys for Defendant-Counterclaimant
CEPHEID

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AS MODIFIED BY THE COURT,
PURSUANT TO STIPULATION, IT IS SO ORDERED.

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DATED: November 9, 2010



Judge ~~Lucy H. Koh~~ Howard R. Lloyd
United States District Magistrate Judge

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I have read
in its entirety and understand the Stipulated Protective Order that was issued by the United States
District Court for the Northern District of California on _____ [date] in the case
of *Abaxis, Inc. v. Cepheid*, Case No. 5:10-cv-02840-EMC. I agree to comply with and to be
bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item that is subject to
this Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Northern District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]