

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM,)
on behalf of itself and all others)
similarly situated,)
Plaintiff)

) C.A. No. 11-10230-MLW

v.)

STATE STREET BANK AND TRUST COMPANY,)
Defendants.)

ARNOLD HENRIQUEZ, MICHAEL T.)
COHN, WILLIAM R. TAYLOR, RICHARD A.)
SUTHERLAND, and those similarly)
situated,)
Plaintiff)

) C.A. No. 11-12049-MLW

v.)

STATE STREET BANK AND TRUST COMPANY,)
Defendants.)

THE ANDOVER COMPANIES EMPLOYEE)
SAVINGS AND PROFIT SHARING PLAN, on)
behalf of itself, and JAMES)
PEHOUSHEK-STANGELAND and all others)
similarly situated,)
Plaintiff)

) C.A. No. 12-11698-MLW

v.)

STATE STREET BANK AND TRUST COMPANY,)
Defendants.)

ORDER

WOLF, D.J.

June 21, 2018

It is hereby ORDERED that:

1. The Master's Motion for Filing Late his Response to the Law Firm's Proposed Redactions to his Report and Recommendations (Under Seal) (Docket No. 305 under seal) is ALLOWED.

2. The Master shall, by June 22, 2018, file redacted versions of: his Response to the Law Firms' Various Motions Concerning Proposed Categories for Redaction (Under Seal) (Docket Nos. 295); his Response to the Law Firms' Proposed Redactions to the Special Master's Report and Recommendations (Under Seal) (Docket No. 306); his response to the proposed redactions to the Report and Recommendations' exhibits, which was previously ordered to be filed by 12:00 noon on June 21, 2018, see June 14, 2018 Sealed Order at 2, and his Response to Motion to Strike Supplemental Gillers Report Filed Under Seal by Labaton Sucharow on June 8, 2018 (Under Seal), for the public record.


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM,
on behalf of itself and all others
similarly situated,

Plaintiff,

No. 11-cv-10230-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

ARNOLD HENRIQUEZ, MICHAEL T. COHN,
WILLIAM R. TAYLOR, RICHARD A.
SUTHERLAND, and those similarly situated,

Plaintiffs,

No. 11-cv-12049-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

THE ANDOVER COMPANIES EMPLOYEE
SAVINGS AND PROFIT SHARING PLAN, on
Behalf of itself, and JAMES PEHOUSHEK-
STANGELAND and all others similarly situated,

Plaintiffs,

No. 12-cv-11698-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

**SPECIAL MASTER'S MOTION TO SEAL SPECIAL MASTER'S RESPONSE TO THE
LAW FIRMS' PROPOSED REDACTIONS TO THE EXECUTIVE SUMMARY TO THE
SPECIAL MASTER'S REPORT AND RECOMMENDATIONS (UNDER SEAL)**

Pursuant to Local Rule 7.2, and as provided for in paragraphs 7 and 11 of the Court's March 8, 2017 Order, the Special Master hereby moves this Honorable Court to permit the Special Master's Response to the Law Firms' Proposed Redactions to the Executive Summary to the Special Master's Report and Recommendations (Under Seal), to be filed under seal until further Court order.

WHEREFORE, Special Master respectfully requests that the Court permit the Motion be filed under seal.

Dated: June 21, 2018

Respectfully submitted,

**SPECIAL MASTER HONORABLE
GERALD E. ROSEN (RETIRED),**

By his attorneys,

/s/ William F. Sinnott
William F. Sinnott (BBO #547423)
Elizabeth J. McEvoy (BBO #683191)
BARRETT & SINGAL, P.C.
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CERTIFICATE OF SERVICE

I hereby certify that this Notice of Appearance was filed electronically on June 21, 2018 and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing ("NEF"). Paper copies were sent to any person identified in the NEF as a non-registered participant.

/s/ William F. Sinnott
William F. Sinnott

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM,
on behalf of itself and all others
similarly situated,

Plaintiff,

No. 11-cv-10230-MLW

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STATE STREET BANK AND TRUST COMPANY,

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ARNOLD HENRIQUEZ, MICHAEL T. COHN,
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Behalf of itself, and JAMES PEHOUSHEK-
STANGELAND and all others similarly situated,

Plaintiffs,

No. 12-cv-11698-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

**SPECIAL MASTER'S MOTION TO SEAL SPECIAL MASTER'S RESPONSE TO THE
LAW FIRMS' PROPOSED REDACTIONS TO THE FIRST SET OF EXHIBITS TO THE
REPORT AND RECOMMENDATIONS (UNDER SEAL)**

Pursuant to Local Rule 7.2, and as provided for in paragraphs 7 and 11 of the Court's March 8, 2017 Order, the Special Master hereby moves this Honorable Court to permit the Special Master's Response to the Law Firms' Proposed Redactions to the First Set of Exhibits to the Report and Recommendations (Under Seal), to be filed under seal until further Court order.

WHEREFORE, Special Master respectfully requests that the Court permit the Motion be filed under seal.

Dated: June 21, 2018

Respectfully submitted,

**SPECIAL MASTER HONORABLE
GERALD E. ROSEN (RETIRED),**

By his attorneys,

/s/ William F. Sinnott
William F. Sinnott (BBO #547423)
Elizabeth J. McEvoy (BBO #683191)
BARRETT & SINGAL, P.C.
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/s/ William F. Sinnott
William F. Sinnott

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ARKANSAS TEACHER RETIREMENT SYSTEM,
on behalf of itself and all others similarly situated,

Plaintiff,

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STATE STREET BANK AND TRUST COMPANY,

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No. 11-cv-10230 MLW

ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R.
TAYLOR, RICHARD A. SUTHERLAND, and those similarly
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Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY, STATE
STREET GLOBAL MARKETS, LLC and DOES 1-20,

Defendants.

No. 11-cv-12049 MLW

THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND
PROFIT SHARING PLAN, on behalf of itself, and JAMES
PEHOUSHEK-STANGELAND, and all others similarly
situated,

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 12-cv-11698 MLW

**LABATON SUCHAROW LLP'S MOTION
FOR LEAVE TO FILE REPLY TO SPECIAL MASTER'S RESPONSE TO
MOTION TO STRIKE SUPPLEMENTAL GILLERS REPORT**

Labaton Sucharow LLP (“Labaton”) respectfully moves for leave to file a reply memorandum in support of its Motion to Strike Supplemental Report of Professor Stephen Gillers and Related Portions of Master’s Report and Recommendations, or, in the Alternative, to Allow Additional Expert Discovery (“Labaton’s Motion”), filed under seal on June 8, 2018. Labaton seeks to respond to arguments advanced by the Special Master in his Response to Motion to Strike Supplemental Gillers Report Filed Under Seal by Labaton Sucharow on June 8, 2018 (the “Master’s Response”), which was filed under seal on June 20, 2018. Labaton’s proposed reply memorandum is limited to seven pages and is Exhibit A to this Motion.¹

Labaton’s proposed reply memorandum addresses, in focused fashion, arguments set forth in the Master’s Reponse.

WHEREFORE, Labaton respectfully requests that the Court grant its motion for leave.

Dated: June 21, 2018

Respectfully submitted,

By: /s/ Joan A. Lukey

Joan A. Lukey (BBO No. 307340)
Justin J. Wolosz (BBO No. 643543)
Stuart M. Glass (BBO No. 641466)
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sglass@choate.com

Counsel for Labaton Sucharow LLP

¹ This Motion for Leave to File a Reply is being filed via ECF, along with Labaton’s Motion to Impound its Proposed Reply. Labaton’s Proposed Reply, which is Exhibit A to this motion, is subject to the pending Motion to Impound and is thus being filed conventionally under seal.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(a)(2)

Labaton's counsel contacted other counsel in this case in order to confer regarding the substance of this motion. The Thornton Law Firm consents to the relief requested. State Street and Lieff Cabraser Heimann & Bernstein LLP do not oppose the relief requested. McTigue Law LLP, Keller Rohrback, and Counsel for the Special Master take no position on the relief requested. Zuckerman Spaeder LLP has not indicated its position as of the time of filing.

/s/ Joan A. Lukey
Joan A. Lukey

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to all counsel of record on June 21, 2018.

/s/ Joan A. Lukey
Joan A. Lukey

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ARKANSAS TEACHER RETIREMENT SYSTEM,
on behalf of itself and all others similarly situated,

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 11-cv-10230 MLW

ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R.
TAYLOR, RICHARD A. SUTHERLAND, and those similarly
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Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY, STATE
STREET GLOBAL MARKETS, LLC and DOES 1-20,

Defendants.

No. 11-cv-12049 MLW

THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND
PROFIT SHARING PLAN, on behalf of itself, and JAMES
PEHOUSHEK-STANGELAND, and all others similarly
situated,

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 12-cv-11698 MLW

**LABATON SUCHAROW LLP'S MOTION
TO IMPOUND ITS PROPOSED REPLY TO SPECIAL MASTER'S RESPONSE TO
MOTION TO STRIKE SUPPLEMENTAL GILLERS REPORT [EXHIBIT A TO
LABATON'S MOTION FOR LEAVE TO FILE REPLY TO SPECIAL MASTER'S
RESPONSE TO MOTION TO STRIKE SUPPLEMENTAL GILLERS REPORT]**

Pursuant to Fed. R. Civ. P. 7(b) and District of Massachusetts Local Rule 7.2, Labaton Sucharow LLP (“Labaton”) respectfully moves to impound its Proposed Reply to Special Master’s Response to Motion to Strike Supplemental Gillers Report (the “Proposed Reply”), which is Exhibit A to Labaton’s Motion for Leave to File a Reply to Special Master’s Response to Motion to Strike Supplemental Gillers Report.¹

1. On May 16, 2018, this Court issued an Order confirming that the Special Master’s Report and Recommendations, the related Executive Summary, and all attached exhibits (collectively, the “Master’s Submission”) are currently under seal in their entirety, and setting forth a process by which the parties may seek redactions so that a public version could be unsealed. ECF 223.

2. Labaton Sucharow LLP’s Proposed Reply requests that the Court strike from the record the unfair and procedurally improper Supplemental Report of Professor Stephen Gillers. It discusses the substance of Prof. Gillers’ original report (Ex. 232 to the Master’s Report and Recommendations), Prof. Gillers’ revised “supplemental” report (Ex. 233 to the Master’s Report and Recommendations), and the Master’s Report and Recommendations – all of which are currently under seal. *See generally* Proposed Reply (discussing sealed materials and addressing specific substantive opinions proffered by Prof. Gillers, which are under seal). Because this information is currently under seal per this Court’s orders, and to prevent a partial release of information under seal, the non-redacted version of this document that contains this discussion of sealed materials should also be kept under seal at least until this Court publicly releases a redacted version of the Master’s Submission. Labaton’s Proposed Reply also quotes and

¹ Labaton’s Motion for Leave to File a Reply to Special Master’s Response to Motion to Strike Supplemental Gillers Report is being filed on ECF, while Exhibit A to that Motion (i.e., Labaton’s Proposed Reply) is being filed conventionally under seal.

discusses the Special Master's June 20 Response, which was filed under seal. Moreover, Labaton's Proposed Reply cites to Ex. 1 of the June 8, 2018 Declaration of Stuart M. Glass, which consists of several pages of the transcript of the March 21, 2018 deposition of Professor Gillers. The Master did not include this transcript as an Exhibit to his Report and Recommendations. Therefore, this information is not currently under seal. However, for the same reasons the Court has ordered the Master's Report and Recommendations and attached Exhibits (which include many deposition transcripts) to be temporarily sealed while the parties evaluate the record and propose redactions, these deposition excerpts should also be temporarily sealed. Accordingly, there is good cause pursuant to D. Mass. L.R. 7.2 to impound the non-redacted version of Labaton's Proposed Reply.

3. Separately, the Proposed Reply seeks to strike and permanently seal an incorrect and inflammatory portion of Prof. Gillers' Supplemental Report and related portions of the Master's Submission, which were the result of a procedurally unfair process. *See* Proposed Reply. In the alternative, Labaton's Proposed Reply seeks to keep this subset of information under seal until the Court rules on Labaton's Objections to the Master's Report and Recommendations, which will allow the Court an opportunity to scrutinize this information before making it public. Thus, the portions of the non-redacted Proposed Reply addressing this specific request should also be kept under seal, either permanently or at least until the Court rules on Labaton's Objections to the Master's Report and Recommendations. Labaton bases its request to impound these portions of its Proposed Reply (whether permanently or temporarily) on the reasons and authority set forth in its Proposed Reply, as well as its Motion to Strike the Supplemental Report and supporting memorandum (filed June 8, 2018), and other supporting authority, including: *United States v. Kravetz*, 706 F.3d 47, 59 (1st Cir. 2013); *In re Auerhahn*,

650 F. Supp. 2d 107, 109 (D. Mass. 2009) (Wolf, C.J.); and *United States v. Amodeo*, 71 F.3d 1044, 1047 (2d Cir. 1995).

4. The information described in ¶ 3, above, is a subset of the information described in ¶ 2, above. Thus, the portions of the Proposed Reply at issue in ¶ 3 also reflect information that is currently under seal, and if the Court denies Labaton's request in ¶ 3, those portions of the non-redacted Proposed Reply should at least remain under seal until the Master's Submission is released, for the reasons Labaton states in ¶ 2, above.

5. Labaton has filed herewith (conventionally, under seal) a redacted version of its Proposed Reply. Those portions that Labaton requests that the Court impound until the release of the Master's Submission – described in ¶ 2 – are redacted in blue. Those portions of the Proposed Reply that Labaton requests the Court impound permanently, or at least until it rules on Labaton's Objections – described in ¶ 3 – are redacted in red.

WHEREFORE, for the reasons set forth herein, Labaton requests that the Court impound its Proposed Reply to Special Master's Response to Motion to Strike Supplemental Gillers Report, which is Exhibit A to Labaton's Motion for Leave to File a Reply to Special Master's Response to Motion to Strike Supplemental Gillers Report

Dated: June 21, 2018

Respectfully submitted,

By: /s/ Joan A. Lukey

Joan A. Lukey (BBO No. 307340)
Justin J. Wolosz (BBO No. 643543)
Stuart M. Glass (BBO No. 641466)
CHOATE, HALL & STEWART LLP
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Tel.: (617) 248-5000
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joan.lukey@choate.com
jwolosz@choate.com
sglass@choate.com

Counsel for Labaton Sucharow LLP

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(a)(2)

Labaton's counsel contacted other counsel in this case in order to confer regarding the substance of this motion. The Thornton Law Firm consents to the relief requested. State Street and Lieff Cabraser Heimann & Bernstein LLP do not oppose the relief requested. McTigue Law LLP, Keller Rohrback, and Counsel for the Special Master take no position on the relief requested. Zuckerman Spaeder LLP has not indicated its position as of the time of filing.

/s/ Joan A. Lukey

Joan A. Lukey

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I hereby certify that this document filed through the ECF system will be sent electronically to all counsel of record on June 21, 2018.

/s/ Joan A. Lukey

Joan A. Lukey

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM,
on behalf of itself and all others
similarly situated,

Plaintiff,

No. 11-cv-10230-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

ARNOLD HENRIQUEZ, MICHAEL T. COHN,
WILLIAM R. TAYLOR, RICHARD A.
SUTHERLAND, and those similarly situated,

Plaintiffs,

No. 11-cv-12049-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

THE ANDOVER COMPANIES EMPLOYEE
SAVINGS AND PROFIT SHARING PLAN, on
Behalf of itself, and JAMES PEHOUSHEK-
STANGELAND and all others similarly situated,

Plaintiffs,

No. 12-cv-11698-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

SPECIAL MASTER'S MOTION TO SEAL
SPECIAL MASTER'S LETTER SUBMITTED TO COURT (UNDER SEAL)

Pursuant to Local Rule 7.2, and as provided for in paragraphs 7 and 11 of the Court's March 8, 2017 Order, the Special Master hereby moves this Honorable Court to permit the Special Master's letter submitted to this Court (Under Seal), to be filed under seal until further Court order.

WHEREFORE, Special Master respectfully requests that the Court permit the letter be filed under seal.

Dated: June 21, 2018

Respectfully submitted,

**SPECIAL MASTER HONORABLE
GERALD E. ROSEN (RETIRED),**

By his attorneys,

/s/ William F. Sinnott

William F. Sinnott (BBO #547423)
Elizabeth J. McEvoy (BBO #683191)
BARRETT & SINGAL, P.C.
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/s/ William F. Sinnott

William F. Sinnott

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM,
on behalf of itself and all others
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No. 11-cv-10230-MLW

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Behalf of itself, and JAMES PEHOUSHEK-
STANGELAND and all others similarly situated,

Plaintiffs,

No. 12-cv-11698-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

**SPECIAL MASTER'S MOTION FOR LEAVE TO FILE
LETTER WITH COURT (UNDER SEAL)**

The Special Master respectfully moves for leave to file a letter with this Honorable Court, to be filed under seal until further Court order. Special Master seeks the Court's guidance on certain issues arising in connection with the Special Master's Report and Recommendations and continuing role in the post-Report stage of the above-captioned case. The Special Master's letter is Exhibit A to this Motion.¹

WHEREFORE, Special Master respectfully requests that the Court grant its motion for leave.

Dated: June 21, 2018

Respectfully submitted,

**SPECIAL MASTER HONORABLE
GERALD E. ROSEN (RETIRED),**

By his attorneys,

/s/ William F. Sinnott
William F. Sinnott (BBO #547423)
Elizabeth J. McEvoy (BBO #683191)
BARRETT & SINGAL, P.C.
One Beacon Street, Suite 1320
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/s/ William F. Sinnott
William F. Sinnott

¹ This Motion for Leave to File Letter is being filed via ECF, along with Special Master's Motion to Seal his letter. The Special Master's letter, which is Exhibit A to this motion, is subject to the pending Motion to Seal and is thus being filed conventionally under seal.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM,)	
on behalf of itself and all others)	
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Plaintiff)	
)	C.A. No. 11-10230-MLW
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ARNOLD HENRIQUEZ, MICHAEL T.)	
COHN, WILLIAM R. TAYLOR, RICHARD A.)	
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v.)	C.A. No. 12-11698-MLW
)	
STATE STREET BANK AND TRUST COMPANY,)	
Defendants.)	

ORDER

WOLF, D.J.

June 22, 2018

Labaton Sucharow LLP's motion, pursuant to Rule 60(b)(1) of the Federal Rules of Civil Procedure and the March 8, 2017 Order

(Docket No. 172), for relief from the Order Awarding Attorneys' Fees, Payment of Litigation Expenses, and Awarding Service Awards to Plaintiffs (the "Fee Order") (Docket No. 111), to assure the court's continuing jurisdiction to modify the Fee Order, should the court find modification to be appropriate, during the pendency of this matter (Docket No. 178) is hereby ALLOWED.


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM,
on behalf of itself and all others
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Plaintiff,

No. 11-cv-10230-MLW

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**SPECIAL MASTER'S MOTION TO SEAL SPECIAL MASTER'S RESPONSE TO THE
LAW FIRMS' PROPOSED REDACTIONS TO THE SECOND SET OF EXHIBITS TO
THE REPORT AND RECOMMENDATIONS (UNDER SEAL)**

Pursuant to Local Rule 7.2, and as provided for in paragraphs 7 and 11 of the Court's March 8, 2017 Order, the Special Master hereby moves this Honorable Court to permit the Special Master's Response to the Law Firms' Proposed Redactions to the Second Set of Exhibits to the Report and Recommendations (Under Seal), to be filed under seal until further Court order.

WHEREFORE, Special Master respectfully requests that the Court permit the Motion be filed under seal.

Dated: June 22, 2018

Respectfully submitted,

**SPECIAL MASTER HONORABLE
GERALD E. ROSEN (RETIRED),**

By his attorneys,

/s/ William F. Sinnott
William F. Sinnott (BBO #547423)
Elizabeth J. McEvoy (BBO #683191)
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/s/ William F. Sinnott
William F. Sinnott

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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on behalf of itself and all others similarly situated,

Plaintiff,

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No. 11-cv-10230 MLW

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Defendants.

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Plaintiff,

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STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 12-cv-11698 MLW

**LABATON SUCHAROW LLP'S MOTION TO IMPOUND EXHIBIT 1 TO
MOTION FOR ORDER DIRECTING MASTER TO RESPOND TO INQUIRY
REGARDING *EX PARTE* COMMUNICATIONS WITH COURT**

Pursuant to Fed. R. Civ. P. 7(b) and District of Massachusetts Local Rule 7.2, Labaton Sucharow LLP (“Labaton”) respectfully moves to impound Exhibit 1 to its Motion for Order Directing Master to Respond to Inquiry Regarding *Ex Parte* Communications with Court (“Motion”).

Labaton is filing the Motion publicly, via ECF. Exhibit 1 to the Motion consists of a June 19, 2017 letter from undersigned counsel for Labaton to counsel for the Special Master. The letter is part of the correspondence discussed in the Special Master’s June 21, 2018 letter to the Court, which the Special Master filed yesterday under seal. Although Labaton does not believe it is necessary for its counsel’s June 19 letter (Exhibit 1) to be filed under seal, in an abundance of caution, because the Special Master filed his June 21 letter under seal, Labaton is following suit. From Labaton’s perspective, the Court is free to release the letter.

WHEREFORE, Labaton files herewith this Motion to Seal Exhibit 1 to its Motion for Order Directing Master to Respond to Inquiry Regarding *Ex Parte* Communications with Court.

Dated: June 22, 2018

Respectfully submitted,

By: /s/ Joan A. Lukey

Joan A. Lukey (BBO No. 307340)
Justin J. Wolosz (BBO No. 643543)
Stuart M. Glass (BBO No. 641466)
CHOATE, HALL & STEWART LLP
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sglass@choate.com

Counsel for Labaton Sucharow LLP

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to all counsel of record on June 22, 2018.

/s/ Joan A. Lukey

Joan A. Lukey

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ARKANSAS TEACHER RETIREMENT SYSTEM,
on behalf of itself and all others similarly situated,

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 11-cv-10230 MLW

ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R.
TAYLOR, RICHARD A. SUTHERLAND, and those similarly
situated,

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY, STATE
STREET GLOBAL MARKETS, LLC and DOES 1-20,

Defendants.

No. 11-cv-12049 MLW

THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND
PROFIT SHARING PLAN, on behalf of itself, and JAMES
PEHOUSHEK-STANGELAND, and all others similarly
situated,

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 12-cv-11698 MLW

**MOTION FOR ORDER DIRECTING MASTER TO RESPOND TO INQUIRY
REGARDING *EX PARTE* COMMUNICATIONS WITH THE COURT**

While expressly preserving its position that the Special Master should have no further role in these proceedings, Labaton Sucharow LLP (“Labaton”) respectfully moves for an Order directing the Special Master to disclose all substantive *ex parte* communications with the Court, including but not limited to communications regarding alleged public corruption.

As grounds for this motion, Labaton says the following:

Labaton has grown increasingly concerned that the Special Master may have engaged in substantive *ex parte* communications with the Court from which a reasonable person could form the belief that an untainted *de novo* review by the Court is no longer possible. In significant part, the genesis of this concern arises from the May 30, 2018 hearing (the “May 30 hearing”) and its aftermath, which events can be summarized as follows:

As was publicly revealed at the May 30 hearing, one key issue raised by the Special Master in his Report & Recommendations (“Report”) relates to the fee division that occurred between Customer Class Counsel and the Texas lawyer who facilitated Labaton’s introduction to Arkansas Teacher Retirement System (“ATRS”). Although the Report makes no finding, and raises no allegation, of public corruption or diversion of funds to a public official, the specter of same was raised by the Court’s examination under oath of ATRS’ Executive Director at the hearing on May 30, 2018. At a sidebar conference following that examination, the Court offered the view that it “is foreseeable that when the Report becomes public, there are going to be questions about the origin of this relationship and whether all those millions of dollars stopped with Mr. Chargois.” May 30, 2018 Sidebar Conf. (ECF No. 244) at 4. Labaton’s counsel expressed shock at the suggestion and posed questions directly to the Court as to whether the Court had “formed an opinion that there is something in this record that suggests that some form of public corruption occurred,” or that “money was going back to [a State Senator] or somebody

else,” the Court responded that it had not; but that it had “formed the opinion that those are questions that are raised...” by the Report and record. *Id.* at 7-8. Labaton’s counsel protested throughout the sidebar that there was no support for such statements in the Report or the exhibits to the Report, and that the Special Master had suggested no such thing. *See, e.g., id.* at 4, 5, 6.

In a June 18, 2018, letter from the Special Master’s counsel to Labaton’s counsel, the Special Master suggested that support for “inappropriate political activities” could be found either in the Report or in the exhibits, and called upon Labaton’s counsel to “clarify” her statements to the Court, and, curiously, to “move to enlarge the record to include all emails on these topics.”¹ Struck by the fact that the Special Master was focusing upon alleged improper political activities that were not the subject of his own Report, Labaton became concerned that the Special Master may have been the source of the Court’s misapprehension regarding political corruption. Labaton’s counsel responded the next day,² calling upon the Special Master to disclose “whether there was any form of *ex parte* communication from the Master to the Court suggesting public corruption,” and stating that, “[i]n fairness to the parties as well as the Court, if this notion started with the Master, that fact should be disclosed.”³ A true and accurate copy of Labaton’s response to the Special Master is filed herewith under seal as Exhibit 1.

¹ Labaton does not know to what emails the Special Master is referring, but notes that the Court’s comments at the May 30 hearing could not have been premised on materials that are not in the Master’s Report or exhibits.

² Labaton does not believe that its June 19 response contains information that is required to be under seal, and does not object to public filing of the letter. However, in an abundance of caution, because the Special Master filed his letter under seal, Labaton is following suit. From Labaton’s perspective, the Court is free to release the letter.

³ As Labaton noted in n. 2 to its Memorandum in support of its Motion pursuant to 28 U.S.C. § 455(a), Labaton is not aware of any direct evidence that an *ex parte* communication of this nature occurred. Such information is only in the possession of the Special Master and the Court; hence, Labaton is filing this motion.

The Special Master has not responded to Labaton's question. If the Special Master did, in fact, engage in one or more substantive *ex parte* communication(s) with the Court on a subject that unavoidably raises the specter of taint, that information will directly inform the course that Labaton will follow in response to the Court's denial (Minute Order, ECF No. 315) of Labaton's Motion pursuant to 28 U.S.C. § 455(a). ECF No. 275. *Cf. Edgar v. K.L.*, 93 F. 3d 256, 259-60 (7th Cir. 1996) (holding that off-the-record briefings by court-retained experts to the Judge required recusal because "[a] thoughtful observer aware of all the facts ... would conclude that a preview of evidence by a panel of experts who had become partisans carries an unacceptable potential for compromising partiality.").

WHEREFORE, Labaton respectfully prays that the Court order the Special Master to (a) produce any written substantive *ex parte* communications with the Court, including without limitation those relating to the suggestion of public corruption, and (b) provide the substance and timing of any and all oral *ex parte* communications with the Court, including without limitation those relating to the suggestion of public corruption.

June 22, 2018

Respectfully submitted,

By: /s/ Joan A. Lukey

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Counsel for Labaton Sucharow LLP

Local Rule 7.1 Certification

Labaton's counsel contacted other counsel in this case in order to confer regarding the substance of this motion. The Thornton Law Firm does not oppose this motion. State Street and McTigue Law take no position on the relief requested. The remaining counsel have not responded as of the time of this filing.

/s/ Joan A. Lukey _____
Joan A. Lukey

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2018, I caused the foregoing Motion to be served by electronic mail on counsel for all parties and counsel for the Special Master.

/s/ Joan A. Lukey _____
Joan A. Lukey



June 21, 2018

Via Hand Delivery

The Honorable Mark L. Wolf
United States District Court
District of Massachusetts
John Joseph Moakley U.S. Courthouse
1 Courthouse Way
Boston, MA 02210

Re: **Special Master's Investigation**

*Arkansas Teacher Retirement System, on behalf of itself and all others
similarly situated v. State Street Bank and Trust Company*
No. 11-cv-10230-MLW

Dear Judge Wolf:

The Special Master writes to seek the Court's guidance on two issues that have recently surfaced in connection with the Special Master's Report and Recommendations and continuing role in the post-Report stage of this case.

First, we seek guidance as to whether the Court would like us to move to clarify and enlarge the existing record concerning matters raised by Labaton's counsel during the May 30, 2018 sidebar conference and in its motion to recuse the Court. We believe that such clarification of the record is necessary.



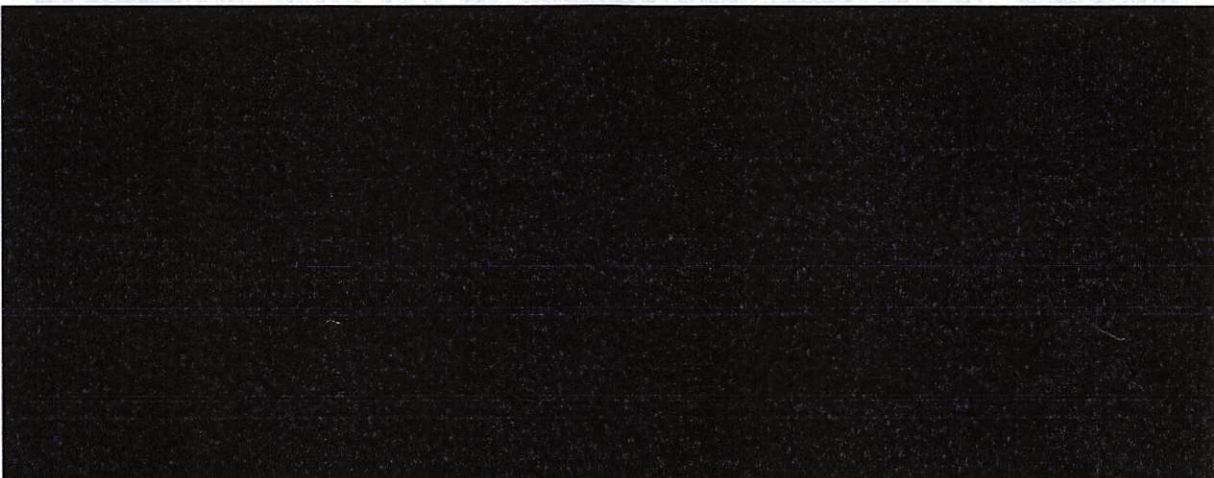
More specifically, during the May 30 sidebar conference, Labaton's counsel indicated that there was nothing in the record that supported an inference of potentially improper political activity surrounding Labaton's selection as ATRS' monitoring counsel, or, in counsel's words,

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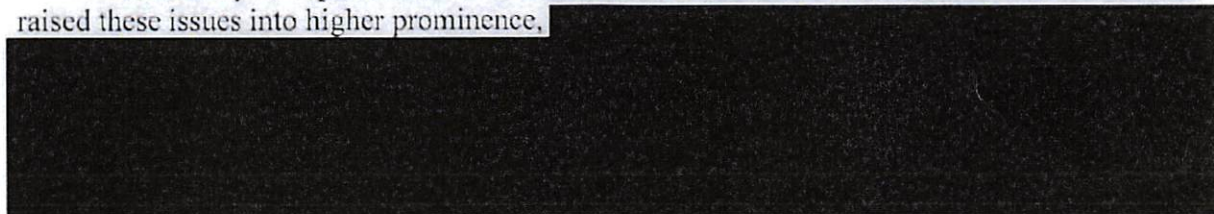
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“public corruption.” For example, in response to the Court’s suggestion that others may raise similar concerns after reading the Report, counsel stated that “He doesn’t say that. Judge Rosen makes no suggestion.” She then elaborated, saying, “[b]ecause there is nothing in the record nor in Judge Rosen’s Report to suggest that, nothing. And it is not so.” During this sidebar colloquy with the Court, counsel stated that the evidence in the record was only that “Mr. Herron talked with Steve Faris who said, call Paul Doane, here’s the phone number.” These statements as to the filed record, which were echoed in Labaton’s motion to recuse the Court are, quite simply, not accurate.



Because by its representations at sidebar and its motion to recuse the Court Labaton has raised these issues into higher prominence,



We are aware that the Court has only this morning indicated that it would be entering an order denying Labaton’s motion to recuse the Court. Nevertheless, we believe that there remains a strong and broader interest in clarifying and enlarging the record, both for purposes of a complete record for any appeals and because there is a strong public interest in having the full record now that a transcript of the May 30 sidebar colloquy and Labaton’s motion to recuse the

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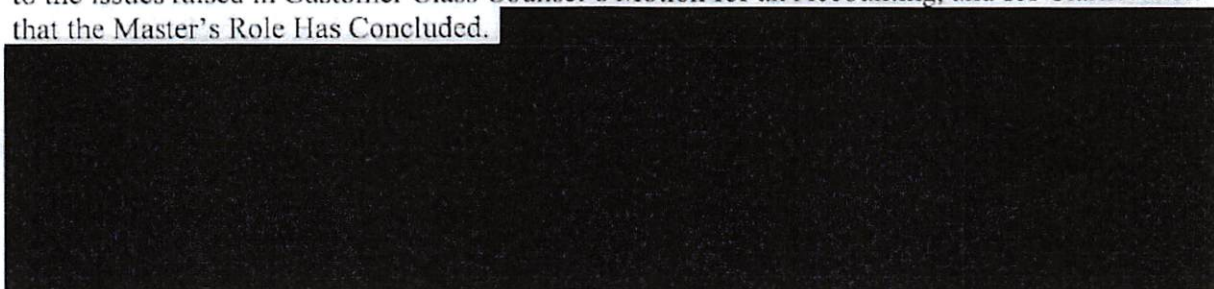
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Court have been made public. The class, which is still represented by Labaton, also has an interest in having a complete record of these matters.

Accordingly, we now seek the Court's guidance as to whether it wishes us to move to clarify and enlarge the record, under seal, and we are prepared to do so, if the Court wishes.

Next, the Special Master seeks the Court's guidance as to whether it wishes us to respond to the issues raised in Customer Class Counsel's Motion for an Accounting, and for Clarification that the Master's Role Has Concluded.



Respectfully submitted,

A handwritten signature in blue ink, appearing to read "W. F. Sinnott", is written over the typed name.

William F. Sinnott
Counsel to the Special Master