

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.

**ASSENTED TO MOTION FOR FILING LATE
THE PROPOSED PARTIAL RESOLUTION
OF ISSUES FOR THE COURT'S CONSIDERATION**

The Special Master hereby moves, with assent from Keller Rohrback LLP, McTigue Law LLP, Zuckerman Spaeder LLP and Labaton Sucharow LLP, to file late the *Special Master's Supplement to His Report and Recommendations and Partial Resolution for the Court's Consideration* and the *Supplemental Response of Labaton Sucharow LLP to His Report and Recommendations and Partial Resolution for the Court's Consideration* (collectively, the "**Proposed Partial Resolution of Issues for the Court's Consideration**") due to unforeseen delays resulting from coordinating among multiple law firms and finalizing said filing. The filing of the above referenced documents will still be filed on the early-morning following on the deadline date of October 9, 2018 and within hours of the deadline time.

Respectfully submitted,

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

By his attorneys,

/s/ William F. Sinnott

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Dated: October 9, 2018

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2018, I caused the foregoing Motion for Filing Late the Proposal Partial Resolution of Issues for the Court's Consideration to be served electronically 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

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DISTRICT OF MASSACHUSETTS

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Plaintiff,

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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 SUPPLEMENT TO HIS REPORT
AND RECOMMENDATIONS AND PROPOSED PARTIAL RESOLUTION
OF ISSUES FOR THE COURT'S CONSIDERATION**

On September 18, 2018, the Special Master advised the Court that he had reached tentative agreement with Labaton Sucharow (“Labaton”) regarding its objections to 1) the Special Master’s Report and Recommendations dated June 28, 2018 (Dkt. # 357) and 2) the exceptions to Labaton’s objections filed by Keller Rohrback L.L.P., McTigue Law LLP, and Zuckerman Spaeder LLP (individually and collectively, “ERISA Firms”) (Dkt. # 387; Dkt. # 398; Dkt. # 392 (“Exceptions”)).¹ The Special Master requested an additional two weeks, or until October 2, 2018, for the parties to memorialize their agreements and submit the proposed resolution to the Court for its consideration. On October 2, 2018, the Special Master requested an additional week, or until October 9, 2018, to file a further report to the Court on the status of the agreements, and the Court granted the request.

The Special Master’s agreement with Labaton concerning Labaton’s Objections to the Report and Recommendations, except as concerns the ERISA Firms, is set forth in Section I below. The Special Master’s agreement with Labaton and the ERISA Firms concerning Labaton’s Objections to the Report and Recommendations concerning the ERISA firms and concerning the ERISA Firms’ Exceptions to Labaton’s Objections is set forth in Section II below.

I. Agreement Between Special Master and Labaton Concerning Proposed Resolution of Labaton’s Objections, Except as Concerns ERISA Firms

On March 8, 2017, the Court appointed the Special Master to investigate and prepare a Report and Recommendations “concerning all issues relating to the attorneys’ fees, expenses, and service awards previously made in this case.” (Dkt. # 173, p. 2). On May 14, 2018, after a

¹ Also, on September 18, 2018, the Special Master informed the Court that he was unable to reach a proposed resolution with Lief Cabraser or the Thornton Law Firm (“Non-Settling Parties”) consistent with how the Special Master views his responsibilities to the Court under the Court’s March 8, 2017 Order and his Report and Recommendations. (Dkt. # 468).

fourteen-month investigation, the Special Master submitted to the Court his Report and Recommendations (“Report”). The Report, in great detail, identified several significant legal issues—the appropriate rules and policies governing attorney fee petitions, the appropriate method for calculating a reasonable request for attorneys’ fees from the Court, fee-sharing, and the scope of obligations owed by lead counsel to act with candor and transparency to their clients, co-counsel, the court, and most importantly, the class—and recommended various remedies to address conduct by Law Firms, other than the ERISA Firms, whose conduct the Master concluded fell short of emerging best practices in late 2016, when the Court considered and awarded a \$75 million fee award. *See* Report (Dkt. # 357, *in passim*, and pp. 362-377). Upon the Court unsealing the Report, certain Law Firms, including Labaton, filed a series of objections. *See* Dkt. # 359; Dkt. # 361; Dkt. # 367.

After receiving, but before responding in writing to, the written objections to the Report, the Special Master conferred at great length with Labaton to narrow, and ultimately to resolve, the legal and factual issues raised in Labaton’s objections. Throughout the discussions, the Special Master has been conscious of the Court’s mandate (as the Court highlighted in its August 28, 2018 Order) to provide his “candid views on the facts and the law,” as presented in the Report. *See* Dkt. # 460, pg. 6. He has balanced that important duty with his duty to consider “reasonable suggestions that would, if adopted, reduce the length and expense of proceedings in this matter,” which has been ongoing since March 2017. *Id.* The Special Master believes that, in light of the laudable results achieved for the Class, and based upon what was known to the Court at the time of the award, the \$75 million attorneys’ fee award to all counsel was reasonable.

While Labaton has concerns with certain of the Special Master's recommended conclusions concerning its conduct, Labaton and the Special Master believe that the following steps and acknowledgements by Labaton addressing those areas of dispute are reasonable, confer a significant benefit upon the class, recognize the importance of the Court's role in presiding over class actions and the fundamental obligations of candor to the Court by class counsel, and are consistent with the Master's view of his obligations under the Court's March 8, 2018 Order and the Report. This includes, most importantly, Labaton's recognition of the great need for transparency and candor in the approval of Court-ordered fee awards, which lies in the sole discretion of the Court, and its failure to meet those needs in this case. The Special Master herein presents for the Court's consideration the following terms of resolution resolving remaining issues in dispute between himself and Labaton as described in Labaton's submission to the Court ("Exhibit A").

Return of benefit earned from double-counted hours on the Fee Petition

This investigation was triggered by the Customer Class Counsel's disclosure, following media inquiries, of an inadvertent double-counting error that accounted for an overstatement of 9,322.9 hours, or \$4,058,654.50 in lodestar fees. Ex. 178 to Report (Dkt. # 357). As one of three firms responsible for this significant monetary error, Labaton agrees to reimburse the class 33.33% of the monetary value of the double-counting, up to \$1,352,666.67. As the Special Master indicated in his Report, the double-counting was not the result of intentional misconduct on the part of Labaton.

Labaton has now discontinued its practice of allowing another firm to pay for the costs of Labaton's staff attorneys working at Labaton's office, and of allowing its staff attorneys to be included on another Firm's lodestar petition.

Recognition of failure to follow emerging best practices

Labaton acknowledges that its conduct in this case did not meet emerging best practices of transparency, candor, and reliability in its submission of the Fee Petition in this case. As a result, the Court could not fully discharge its fiduciary obligations to the class members. Labaton has accepted responsibility for its conduct in this case and expresses regret.

Specifically, Labaton acknowledges that its \$4.1 million payment to Damon Chargois did not constitute a case-specific referral fee, as those are commonly understood across the legal industry. Labaton further acknowledges that Chargois did not commit to work on, nor accept responsibility for, the representation of ATRS in the prosecution of the State Street case, and that these factors should have led to a more robust discussion with its client, and the Court, prior to awarding attorneys' fees. Furthermore, failure to disclose these factors did not comport with emerging best practices at the time of the fee submission, which was to disclose in detail the terms of the Chargois Arrangement to the client, interested parties, the class, and to the Court. The Special Master finds, however, that the payment itself to Chargois did not violate the rules of professional misconduct or constitute intentional misconduct.

Nonetheless, Labaton recognizes that had the Court received full disclosure of the Chargois Arrangement, the Court may have awarded a lesser fee to Labaton, resulting in additional funds earmarked for the class.

Continuation of Labaton's role as lead counsel for the class

Given Labaton's efforts to address past shortcomings, including its recent efforts to enhance transparency with its current and future clients as to the nature of its representations, the Special Master recommends that Labaton continue in the role of Lead Counsel for the Settlement Class and ATRS as Class Representative. For the avoidance of any doubt that the class is

adequately represented moving forward, the Special Master will recommend to the Court that the ERISA Firms be appointed to serve alongside Labaton as additional Lead Counsel for the Settlement Class. The seven current Class Representatives will remain. (ECF# 110, p. 4.)

Money returned to the class

Labaton agrees to return \$700,000 of the funds attributable to the Chargois payment to the class, as previously recommended.²

Labaton will continue to work closely with its settlement claims administrator in the case, AB Data, to identify class members and promptly distribute class funds.

Entry of Bar Order

The Special Master requests that the Court enter an order consistent with Mass. Gen. Laws ch. 231B, § 4 (West 2018), barring any Non-Settling party from bringing an action against Labaton or the ERISA plaintiffs for contribution or indemnification regardless of how it is styled or denominated.

Remedial and preventative measures taken by Labaton

As discussed above, Labaton recognizes the importance of having all individuals involved in a case participate in the preparation and filing of a fee petition requesting attorneys' fees for the firm, and recognizes that this did not occur in this case and that the "compartmentalization" or "siloing" of the firm detailed in the Special Master's Report contributed significantly to the problems in this case. To remedy this shortcoming in the process, the firm has created the new position of Head of Litigation, to whom it has appointed former

² The Special Master recommended in his Report and Recommendations that, of the \$4.1 million payment to Chargois, Labaton pay \$700,000 back to the Class and that the remaining \$3.4 million be paid to the ERISA Firms. In addition to the \$700,000 payment to the Class (set forth above), Labaton agrees to pay \$2.75 million (of the original \$3.4 million recommended) to the ERISA Firms. See Section 2, below. The Special Master agrees that this is an appropriate resolution of his recommendation as to the Chargois Arrangement.

General Counsel Jonathan Gardner. Labaton has also adopted a new practice of assembling a “settlement team” upon reaching a settlement in principle in a matter. The settlement team will routinely consist of Nicole Zeiss, Labaton’s head of the settlement department, a client relationship attorney familiar with the client, and a member of the litigation team. In addition, the settlement team will circulate the full fee submission package, including information collected from all firms, to co-counsel for final review prior to submission to the Court.

To further insure the firm’s compliance with ethical and legal standards moving forward, Labaton has formally appointed Michael Canty, Esq. as General Counsel, and Carol Villegas, Esq., as Chief Compliance Officer, to provide ethics advice arising at the firm. Under this structure, all engagement letters will be signed by General Counsel Canty and are required before litigation may commence.

With regard to division of attorneys’ fees, Labaton has taken efforts to be in compliance with emerging best practices in order to achieve greater transparency vis-a-vis its clients and the Court. By way of example, Labaton has implemented a mandatory policy for executing retainer agreements, a Case Transition and Complaint Drafting Policy, and training for all partners, including senior level partners, explaining client disclosure and consent requirements. Each of these policies will incorporate New York’s ethical rules as well as reflect emerging best practices in the field.

Labaton has already engaged an outside ethics expert to work with the firm to bring its existing fee arrangements with co-counsel into compliance. To this effect, Labaton has proactively created firm-wide templates addressing various types of retention agreements, including securities class actions, antitrust retentions, liaison counsel agreements, whistleblower

retentions, and fee allocation agreements with counsel, all of which reflect appropriate ethical standards and current emerging best practices.

To insure transparency with the Court in future cases, Labaton has also formally adopted a policy prohibiting “bare referral” arrangements with other attorneys. It has further agreed to adopt an internal policy requiring the firm to disclose to the court, regardless of the jurisdiction, any fee sharing arrangement between or among counsel, commensurate with the obligations set forth in the Local Rules of the Eastern and Southern Districts of New York.

Finally, within 60 days of signing this agreement, Labaton will retain James Holderman, former Chief Judge of the United States District Court, Northern District of Illinois, for one year to ensure that Labaton’s retention, fee sharing agreements and other policies concerning fee applications are in compliance with applicable rules and emerging best practices. Judge Holderman will provide Labaton a report within 60 days of his retention. During the retention period, Labaton will fully cooperate with Judge Holderman’s review. Labaton shall provide a copy, upon request, to the Special Master and the Court. Additionally, Judge Holderman will provide a letter to Labaton on or about one year from the date of the Court’s approval of the Special Master’s Proposed Partial Resolution, regarding the status of its compliance. Labaton will voluntarily provide a copy of the letter to the Special Master upon request.

II. Agreement Between the Special Master, Labaton and the ERISA Firms Concerning Labaton's Objection Regarding the ERISA Firms and The ERISA Firms' Exceptions to Labaton's Objections

The ERISA Firms on behalf of themselves and their clients did not participate in the negotiations referenced in Section I and are not parties to the terms referenced in Section I above, except for the terms referring to additional Lead Counsel for the Settlement Class.³

The ERISA Firms on behalf of themselves engaged in separate negotiations with Labaton and the Special Master regarding the ERISA Firms' Exceptions, which generally stated that if the Chargois Arrangement had been disclosed to the ERISA Firms they would have filed their own fee petition instead of making a joint petition with Labaton and the other Non-Settling Firms, and they would not have agreed to the Claw Back Letter Agreement in November of 2016. Through the Special Master, Labaton, the Special Master and the ERISA Firms reached an agreement to resolve the Exceptions as provided in this Section II:

Labaton agrees to pay, within forty-five (45) days after the District Court's entry of an Order adopting the Special Master's recommendations as to the entire submission, the amount of \$2.75 million to the ERISA Firms (in resolution of the Special Master's recommended \$3.4 million payment; see footnote 2 above), based upon the Special Master's recommendation, and the ERISA Firms agree to accept this amount, and agree not to seek additional amounts from Labaton. As reflected in footnote 2, the Special Master agrees that this is an appropriate resolution of his recommendation as to the Chargois Arrangement.

Labaton additionally agrees that it will not enforce the Claw Back Letter Agreement against the ERISA Firms; and, as to Labaton, the Claw Back Letter Agreement is null and void

³ For the avoidance of any doubt, Exhibit A is not part of the agreement with the ERISA Firms; nothing in Exhibit A can cause ambiguity as to the meaning of Section II, and to the extent Exhibit A is inconsistent with Section II, Section II is the agreement with the ERISA Firms and it controls.

as to the ERISA Firms. Further, as part of this agreement, Labaton will not challenge any fees already paid and awarded to the ERISA Firms; nor will it support or cooperate with any such challenge by any Non-Settling Firm or others.

The ERISA Firms agree, individually and jointly, that they shall be deemed to have mutually, fully, finally and forever waived, released, discharged and dismissed any and all claims against Labaton and its partners for any attorneys' fees or expenses to date arising from *Arkansas Teachers Retirement System et al. v. State Street Corporation*, No. 11-cv-10230-MLW (D. Mass.) and related cases, as well as any attorneys' fees or expenses arising from the investigation to date by the Special Master. Labaton agrees that it shall be deemed to have mutually, fully, finally and forever waived, released, discharged and dismissed any and all claims against the ERISA Firms and their partners for any attorneys' fees or expenses arising from *Arkansas Teachers Retirement System et al. v. State Street Corporation*, No. 11-cv-10230-MLW (D. Mass.) and related cases, as well as any attorneys' fees or expenses arising from the investigation to date by the Special Master.

As to the ERISA Firms, as previously set forth in Section 1, the Special Master requests that the Court enter an order consistent with Mass. Gen. Laws ch. 231B, § 4 (West 2018), barring any Non-Settling party from bringing an action against Labaton or the ERISA plaintiffs for contribution or indemnification regardless of how it is styled or denominated. By entering into this proposed agreement with the Special Master and Labaton, the ERISA Firms take no position on the proposed changes to the Special Master's Report and Recommendations (Dkt. # 357) other than the Special Master's recommendation as to the \$3.4 million payment (now a recommended \$2.75 million), Labaton's agreement not to enforce the Claw Back Letter Agreement against the ERISA Firms, and those other matters referenced in this Section II.

III. Conclusion

If the Court accepts the above-described terms, Labaton agrees to withdraw all pending motions, including its written objections to the Report, and waive its right to notice an appeal in any forum concerning these matters. Labaton also agrees to pay its proportionate share of the remaining amounts due to the Special Master and his team for their unpaid work. Labaton will also continue to cooperate in this investigation, and in any federal, state, administrative, or judicial inquiries initiated.

The parties point out that they each retain the right to revisit their objections, in whole or in part, should the Court not accept the Special Master's recommendations to resolve the matters as described herein. In the event the Court does not accept the terms as proposed, or issues an order that Labaton or the ERISA Firms wish to contest, all parties, including the Special Master, shall be deemed reinstated, without prejudice, to the position held prior to reaching the terms presented herein, including the right of Labaton to have its objections to the Report heard and considered, the right of ERISA Firms to have their exceptions to Labaton's objections heard and considered, and the right of the Special Master to file and have heard and considered his responses to those objections and exceptions.

The Special Master believes that, on balance, the acknowledgments summarized above, along with the remedial actions described, and Labaton's sincere acceptance of responsibility and expression of regret, appropriately address the findings and recommendations made by the Special Master in his Report while promoting judicial efficiency and avoiding unnecessary cost. In sum, these terms comport with the spirit of the findings and recommendations of the Report.

Therefore, the Special Master respectfully presents it to the Court for the Court's consideration and approval.

Dated: October 9, 2018

Respectfully submitted,

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

By his attorneys,

/s/ William F. Sinnott

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ACKNOWLEDGEMENTS

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Dated: October 9, 2018

CERTIFICATE OF SERVICE

I hereby certify that this foregoing document was filed electronically on October 9, 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

Exhibit A

EXHIBIT A

**SUPPLEMENTAL RESPONSE OF LABATON SUCHAROW LLP TO THE SPECIAL
MASTER'S SUPPLEMENT TO HIS REPORT AND RECOMMENDATIONS AND
PROPOSED PARTIAL RESOLUTION OF ISSUES
FOR THE COURT'S CONSIDERATION**

After much work, dedication and exceptional effort in the discovery and mediation process, the parties in the underlying State Street matter ultimately reached a \$300 million settlement. Given the risks, complexities and legal challenges inherent in the litigation, it must be said that the \$300 million settlement, procured by skilled and dedicated plaintiffs' counsel, was an excellent result for the class. The Special Master has recognized the important role class actions and plaintiffs' class action attorneys play in protecting and enforcing the rights of consumers, injured parties and the public in general. To adequately fulfill this role, class action plaintiffs require sophisticated, well-resourced attorneys who should be compensated at rates comparable to those of the large, sophisticated, well-resourced defense firms who will in the vast majority of cases be opposing them.

As explained by the Special Master, an important part of the class action framework is ensuring the integrity of the fee petition process. Because the fee petition process is often non-adversarial, as it was in this case, for the system to work properly, honesty, reliability and transparency are essential to enable the Court to adequately fulfill its assigned gatekeeping and fiduciary responsibilities to class members. As explained herein, Labaton acknowledges that it did not fully meet these high standards here, and expresses its sincere regret to the Court, the Class, its client, and to other interested parties in this case.

In order to assist in narrowing the work to be performed by the Master upon resubmission to him of his Report & Recommendations (“Report”)¹, Labaton Sucharow LLP (“Labaton”), respectfully supplements and modifies its prior response to the Master’s Report & Recommendations, ECF No. 357, as follows:

(1) Labaton acknowledges that its fee agreement with the law firm of, and the fee paid in the captioned litigation (the “State Street case”) to, Damon Chargois, Esq. (“Chargois”) involved an agreement for the division of fees (the “Chargois fee agreement”) that preceded the State Street case, rather than a traditional case-specific referral fee relating to a single matter. While the State Street case is governed by the Massachusetts Rules of Professional Conduct, which permit bare referral fees, Labaton acknowledges that the non-traditional nature of the Chargois fee agreement, and the facts that he neither worked on nor assumed responsibility for the State Street case, constitute important factors that would likely have contributed to a more robust decision-making process by the Court in the fee award process. The emerging best practices, then and now, as evidenced in part by the Local Rules of the Eastern and Southern Districts of New York where Labaton has extensively practiced, would have included a fulsome disclosure of the Chargois fee agreement to the client, to the Class by proposed notice or otherwise, and to the Court.

Labaton, which seeks to follow emerging best practices in the class action field, deeply regrets that it did not adopt these emerging best practices in this case and accepts responsibility for the shortcomings addressed herein and in the Special Master’s Report and Recommendations.

¹ To the extent that a capitalized term is not defined herein but is defined in the Special Master’s Supplement to His Report and Recommendations and Proposed Partial Resolution of Issues (“Proposed Resolution”), the definition in the Proposed Resolution applies.

(2) Labaton understands that the Special Master agrees that the Court-awarded fees of approximately \$75 million of the Settlement Fund was reasonable in light of the settlement result and the factors known to the Court at the time. Labaton acknowledges that the Court, in awarding attorneys' fees from a settlement in a class action, has the authority to determine the allocation of settlement funds between counsel and the class. Labaton acknowledges that the Court may have allocated a lesser fee to Labaton and more settlement funds to the Class, had the Court been apprised of the Chargois fee agreement.

(3) Labaton understands that the Special Master agrees that there was no intentional misconduct associated with the double counting error or with Labaton's failure to follow emerging best practices with regard to disclosure of the Chargois fee agreement. Nonetheless, Labaton, while complying with its disclosure obligations under the strict letter of the Federal Rules of Civil Procedure and the Massachusetts Rules of Professional Conduct, acknowledges that it did not follow emerging best practices relating to disclosure to the client, ERISA co-counsel, the class, and the Court.

(4) Labaton believes that resolving these issues is in the best interests of the Class and counsel. Therefore, if the Master recommends and the Court accepts the remedies proffered by Labaton below in lieu of formal action and reduction of the fee previously held to be reasonable (other than those reductions recommended herein, and those reductions in the Special Master's Report and Recommendations as to the Non-Settling firms), Labaton agrees to the Resolution and agrees to adopt, or where indicated, has already adopted, the following emerging best practices as its policies going forward:

With regard to the “Double Counting” Issue:

(a) Labaton has already discontinued, and commits not to renew, the practice of housing staff attorneys within Labaton’s premises while allowing another firm to pay the cost of such staff attorneys or carry such attorneys on their lodestar fee petitions.

(b) Labaton has created, and commits to maintaining, the position of Head of Litigation to provide proper oversight of all litigation teams and to allow for continuity in administering cases from beginning to end with proper accountability. Labaton has appointed Jonathan Gardner, the former General Counsel of the Firm, as the first partner to fill that role.

(c) With regard to the issues of “compartmentalization” or “siloeing”, Labaton acknowledges that these practices have contributed to certain of the concerns identified in the Report and Recommendations and Labaton has implemented, and commits to continuing, additional requirements to provide greater continuity and scrutiny of settlement submissions to the court. These additional requirements include the following: Once a settlement is achieved, a settlement team will be created consisting of the head of the Settlement Litigation Group (currently Nicole Zeiss), a client relationship attorney with knowledge of the client, and a member of the litigation team that prosecuted the action. Each member of the settlement team shall review all submissions before filing. In addition, when other firms are involved in prosecuting a case, the Settlement Litigation Group will circulate all fee submissions from all firms to each of the other firms to review for potential errors before submission to the Court.

With regard to the fee division issue:

(d) In order to provide for greater transparency to its client, co-counsel, the class and the Court, and to adopt best practices in the area of division of fees, Labaton has implemented and will codify the following improvements:

(e) Labaton will develop a Policy and Procedure for Retainer Agreements Manual with which all of the Firm's practicing attorneys must familiarize themselves;

(f) Labaton will develop additional requirements for inclusion in its Case Transition and Complaint Drafting Policy to the effect that, before the filing of a Complaint or the transition to Labaton of a case already filed by another firm, every attorney involved must review the Ethics Rules for the jurisdiction in which the case will be or has been filed as well as the New York Ethics Rules, and will flag any potential ethics issues for the partner assigned to run the case.

(g) Labaton will require training for all partners, regardless of seniority, regarding client disclosure and consent requirements. To that end, the Firm has retained the services of an expert practitioner to provide the training on a bi-annual basis.

(h) Within 60 days of signing this agreement, Labaton will retain James Holderman, former Chief Judge of the United States District Court, Northern District of Illinois, for one year to ensure that Labaton's retention and fee sharing agreements and other policies concerning fee applications are in compliance with applicable rules and emerging best practices. Judge Holderman will provide Labaton a report within 60 days of his retention. During the retention period, Labaton will fully cooperate with Judge Holderman's review.

(i) Labaton shall provide a copy, upon request, to the Special Master and the Court. Additionally, Judge Holderman will provide a letter to Labaton on or about one year from the date of the Court's approval of the Special Master's Proposed Partial Resolution, regarding the status of its compliance. Labaton will voluntarily provide a copy of the letter to the Special Master upon request.

(j) Labaton will formally appoint Michael Canty as General Counsel and Carol Villegas as Chief Compliance Officer. In these roles, Canty and Villegas will provide advice on ethical issues and will coordinate with Labaton's outside ethics expert to provide prompt responses to any ethical questions raised within the Firm.

(k) Labaton shall require each engagement letter to be reviewed and signed by its General Counsel, and no litigation can be undertaken without a signed, approved engagement letter.

(l) Labaton shall implement and codify a policy requiring that all fee sharing arrangements are to be disclosed in writing to the client at the time of the retention and consented to in writing by the client, regardless of whether the relevant jurisdiction has less stringent standards.

(m) Labaton shall adopt and codify a policy to comply with the Local Rules of the Eastern and Southern Districts of New York requiring disclosure to the Court of fee sharing arrangements, regardless of the jurisdiction in which litigation is to be filed or is pending.

(n) Notwithstanding the permissibility of "bare referral" agreements in certain jurisdictions, Labaton shall implement and codify a policy prohibiting such agreements.

In addition, Labaton confirms that it has adopted, and will continue to abide by, the following requirements:

(o) Labaton has formally reviewed, and revised where necessary, its fee division arrangements in all current cases involving such agreements, with the assistance of an outside ethics expert in order to ensure that all such arrangements comply with applicable ethics requirements.

(p) To ensure compliance with applicable ethics requirements, Labaton has created templates for new cases that clearly outline fee division arrangements and the role and responsibility of the referring attorney. These templates include securities class action retention agreements, antitrust retention agreements, direct action retention agreements, liaison counsel agreements, case-specific fee allocation agreements, and whistleblower retainer agreements.

With regard to this case generally:

(q) Labaton will cooperate with any federal, state or judicial inquiry that may arise relating to this case.

(r) Labaton will continue to work on behalf of the class in assisting AB Data with the distribution of funds to the class.

With regard to financial terms:

(s) As to sums attributable to so-called “double counting” as described in the Special Master’s Report and Recommendations, Labaton will pay to the class 33.33% of the determined amount, up to a maximum of \$1,352,666.67.

(t) As to sums attributable to the fee agreement with Chargois, Labaton shall pay \$700,000 to the Class as previously recommended by the Master.

With regard to the ERISA Firms:

(u) Labaton agrees to pay, within forty-five (45) days after the District Court’s entry of an Order adopting the Special Master’s recommendations as to the entire submission, the amount of \$2.75 million to the ERISA Firms (in resolution of the Special Master’s recommended \$3.4 million payment; see footnote 2 above), based upon the Special Master’s recommendation, and the ERISA Firms agree to accept this amount, and agree not to seek additional amounts from

Labaton. As reflected in footnote 2, the Special Master agrees that this is an appropriate resolution of his recommendation as to the Chargois Arrangement.

(v) Labaton additionally agrees that it will not enforce the Claw Back Letter Agreement against the ERISA Firms; and, as to Labaton,, the Claw Back Letter Agreement is null and void as to the ERISA Firms.

Upon the District Court's entry of a final order accepting the terms of the proposed resolution, as set forth in the Special Master's contemporaneous submission, the parties agree to waive their rights to appeal any issue related to the ERISA Firms.

(w) The ERISA Firms agree, individually and jointly, that they shall be deemed to have mutually, fully, finally and forever waived, released, discharged and dismissed any and all claims against Labaton, and its partners for any attorneys' fees or expenses to date arising from *Arkansas Teachers Retirement System et al. v. State Street Corporation*, No. 11-cv-10230-MLW (D. Mass.) and related cases, as well as any attorneys' fees or expenses arising from the investigation to date by the Special Master. Labaton agrees that it shall be deemed to have mutually, fully, finally and forever waived, released, discharged and dismissed any and all claims against the ERISA Firms and their partners for any attorneys' fees or expenses to date arising from *Arkansas Teachers Retirement System et al. v. State Street Corporation*, No. 11-cv-10230-MLW (D. Mass.) and related cases, as well as any attorneys' fees or expenses arising from the investigation to date by the Special Master.

With regard to miscellaneous issues:

(x) As to Non-Settling parties, Labaton and the Special Master request that the Court enter an order consistent with Mass. Gen. Law. ch. 231B, § 4 (West 2018), barring any Non-

Settling party from bringing an action against Labaton or the ERISA plaintiffs for contribution or indemnification regardless of how it is styled or denominated.

(y) Labaton will defray remaining actual fees and expenses of the Master and his team in an amount not to exceed 33.33% of the fees and costs of the Special Master and his counsel billed for work performed and approved by the Court until the Court's final acceptance of the Proposed Resolution

(z) In the event the Court accepts the Proposed Resolution, Labaton will withdraw all pending motions, agree to waive its right to appeal, and agree to pay its above-referenced proportionate share of any remaining amounts due to the Special Master and his team for their unpaid work. In the event the Court does not accept the terms as proposed, or issues an order that Labaton or the ERISA Firms wish to contest, all parties, including the Special Master, shall be deemed reinstated, without prejudice, to the position held prior to reaching the terms represented herein, including the right of Labaton to have its objections to the Report heard and considered, the right of the ERISA Firm to have their exceptions to Labaton's objections to the Report heard and considered, and the right of the Special Master to file and have heard and considered his responses to those objections and exceptions.

(aa) Given Labaton's efforts to address past shortcomings -- including its recent efforts to enhance transparency with its current and future clients as to the nature of its representations -- and its acceptance of responsibility and expression of regret, the Special Master recommends that Labaton continue in the role of Lead Counsel for the Settlement Class and ATRS as a Class Representative. For the avoidance of any doubt that the Class is adequately represented moving forward, the Special Master will recommend to the Court that the ERISA Firms be appointed to serve alongside Labaton as additional Lead Counsel for the Settlement

Class. The other six Class Representatives already appointed by the Court will remain. (ECF #110, p. 4.).

(ab) Labaton acknowledges that any final proposed resolution is subject to the Court's approval, but also understands that the Special Master will use his best efforts to secure such approval.

Dated: October 9, 2018

Respectfully submitted,

SPECIAL MASTER HONORABLE
GERALD E. ROSEN (RETIRED),

By his attorneys,

/s/ William F. Sinnott
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CERTIFICATE OF SERVICE

I hereby certify that this foregoing document was filed electronically on October 9, 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