

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 RESPONSE TO OBJECTIONS OF LIEFF CABRASER AND
THORNTON LAW FIRM TO SHARING RESPONSIBILITY WITH LABATON FOR
PAYMENT OF AN ADDITIONAL \$750,000**

On August 28, 2018, the Court notified the parties that, pursuant to the March 8, 2017 Appointment Order (¶ 16), the Court was considering amending its prior orders to require that Labaton pay an additional \$750,000 from fees already received (“Additional Funds Order”). Dkt. #461. The Court set a deadline of September 18, 2018 for the firms to respond to the proposed amendment presented in the Order.

In a separate August 28, 2018 Order, the Court directed the Special Master and the Lawyers to confer and report to the Court by September 6, 2018 on the status of any agreement for a proposal to resolve some or all of the issues in dispute in the case, for the Court’s consideration. Dkt. #460. On September 6, 2018, the Special Master informed the Court that discussions with the Lawyers were ongoing, and, in order to provide ample time to complete discussions after an in-person meeting of all counsel scheduled for September 11, 2018, requested until September 18, 2018 to provide an update to the Court. Dkt. #463. As part of this request, the Master requested, and the Court allowed, a stay of any outstanding substantive filings due by the Law Firms until September 18, 2018. Any outstanding responses that the Law Firms still wished to file would be due on that day. *Id.*

On September 18, 2018, the Special Master informed the Court that the Master had reached a tentative agreement with Labaton and the ERISA Firms for a proposal to resolve all of the issues as to those firms, with definite terms to be filed with the Court for its consideration by October 2, 2018. Dkt. #468. Because it could be reasonably anticipated that firms other than Labaton would wish to file a response to the Court’s August 28, 2018 Additional Funds Order proposing an amendment, the Master requested that the Court continue to stay all outstanding

substantive pleadings, as to all firms, also until October 2, 2018.¹ However, as indicated in the Special Master's response, also filed on September 18, 2018, the Master was unable to reach an agreement with Lief Cabraser or Thornton Law Firm. Dkt. #468. Pursuant to the previously-extended deadline of September 18, 2018 set by the Court, Dkt. #465, to file all outstanding substantive pleadings, Lief Cabraser and the Thornton Law Firms filed responses to the Additional Funds Order on that same day. Dkt. #466; Dkt. #467.

On September 20, 2018, the Special Master requested leave to file a brief response to both filings. Dkt #469. On September 21, 2018, the Court authorized the Special Master to respond. Dkt #470.

The Special Master responds to three points raised:

1. Objections to the payment and total costs of the investigation as excessive. Lief Cabraser, in seeking clarification concerning its obligation to contribute to the additional payment of \$750,000, objects to the payment as excessive, as are, Lief asserts, the current costs of the Special Master's investigation. Dkt. #466. It further argues that any additional payments to the Special Master should be deferred until a "full and final accounting" can be held. In its August 10, 2018 Order, the Court denied Customer Class Counsel's (including Lief Cabraser's) previous request for an accounting. Dkt. #445, ¶ 1. In denying the request, the Court considered, and rejected, near-identical arguments—including that the then-accrued costs of the Master's investigation were "excessive" or "disproportionate." *See* Dkt. #302. The Court, in that same order, resubmitted the Report & Recommendations to the Special Master, without limitation, to

¹ On October 2, 2018, the Special Master requested, and the Court allowed, an additional week to submit the terms of a proposed resolution. On October 10, 2018 (after filing an assented-to motion for late filing), the Special Master filed the Master's Supplement to his Report and Recommendations and Proposed Partial Resolution of Issues for the Court's Consideration, attached to which was the Supplemental Response of Labaton Sucharow to the Special Master's Supplement.

respond to objections and continue actively participating in post-Report proceedings. Having decided this issue, the Court should, again, deny Lieff Cabraser's request to defer additional payment until a final accounting is performed; in any event, it is not clear that the Court intends or is obligated to provide a public accounting at any time.²

2. Future filings by the Special Master. Thornton Law Firm argues that the Special Master should "refrain from filing or drafting documents that the Court does not request" as a means to avoid unnecessary costs moving forward with the investigation. Dkt. #467, p. 2. This statement grossly mischaracterizes the Special Master's past and current filings. Most importantly, it contradicts the Court's explicit direction to the Master in its August 10, 2018 Order. Dkt #445. In that Order, the Court resubmitted to the Master the Report & Recommendations to, among other things, respond to the objections as well as to continue with an evidentiary hearing, if necessary. In defining the Special Master's role, the Court directed the Master to "address any issues related to the Report if requested by the court or authorized by the court in response to a request by the Master." Dkt. #445, p. 2. The Special Master has in this pleading, followed, and will continue to follow, the Court's direction and properly file any responses inherent in his duties in this case.³

3. Responsibility to fund the remainder of the Special Master's investigation. In taking a narrow view of the Additional Fund Order, Thornton argues that the obligation to pay an additional \$750,000 falls squarely on Labaton. The Special Master does not read the Court's

² The March 8, 2017 Appointment Order provides that "[t]he court intends to disclose the cost of the Master at the conclusions of these proceedings," but does not reference an "accounting." Dkt #173.

³ To date, the Special Master has exercised great restraint in the post-Report stage by selectively filing only those pleadings necessary to respond to the Customer Class Counsel's allegations. It bears repeating that one of the principal reasons for the Master's continued involvement after filing his Report is to insure that the class, and the Court, benefit from "a genuine adversarial process." 5/30/18 Hrg Trans., p. 7. It was, after all, the breakdown in the adversarial process at the initial fee award stage that prompted the Court to appoint the Special Master in the first place.

order so narrowly. As previously pointed out by the Court, the Appointment Order directed that \$2 million be paid “only from the award of attorneys’ fees and expenses distributed to Labaton [], Thornton [], and Lieff [].” Dkt. #173, ¶ 13.

On a more practical level, the payment-sharing and costs burden objections of Lieff Cabraser and Thornton inaccurately minimize the central role that each of the firms played in the Special Master’s investigation and the settlement process. Although Labaton has, to date, carried a substantial portion of the case for Customer Class Counsel, Lieff Cabraser and Thornton have each contributed significantly to the Master’s workload and to the concomitant costs of the investigation.

Finally, Labaton has reached an agreement with the Special Master and the ERISA Firms for a proposed resolution of the disputed issues as to Labaton, which was submitted to the Court on October 10, 2018. Should the Court consider and adopt the proposed resolution, the Special Master need not further respond to the objections made by Labaton and the ERISA Firms. This will significantly narrow the scope of work remaining for the Special Master. In the event that Labaton resolves, with the Court’s approval, all of its disputed issues – leaving only objections filed by Thornton and Lieff Cabraser – the Master recommends that Thornton and Lieff Cabraser assume full financial responsibility for the reasonable costs and expenses during this final stage of investigation.

Dated: October 11, 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
Boston, MA 02108
Telephone: (617) 720-5090
Facsimile: (617) 720-5092
Email: wsinnott@barrettsingal.com
Email: emcevoy@barrettsingal.com

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically on October 11, 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

mlw

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.

*9/22/18
D.J. O'Sullivan
is denied. WBU.*

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

*ALLOWED. However, any future motion(s)
for an extension by any party shall
be filed sufficiently in advance of the
deadline to permit compliance of the motion*

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.)

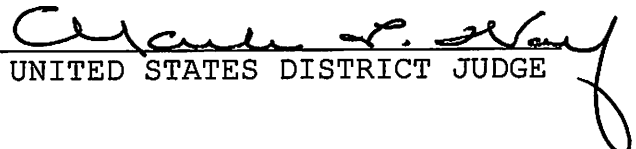
ORDER

WOLF, D.J.

October 11, 2018

It is hereby ORDERED that the Competitive Enterprise
Institute shall, by October 12, 2018, state whether it wishes to

participate in the October 15, 2018 hearing in person or, if necessary, by telephone.


UNITED STATES DISTRICT JUDGE



October 11, 2018

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

RE: *Arkansas Teacher Retirement System, et al v. State Street Bank and Trust Company
No. 11-cv-10230-MLW; No. 11-cv-12049-MLW; No. 11-cv-11698-MLW*

Dear Judge Wolf:

I am writing to inform the Court that on October 1, 2018 I gave formal notice to the Arkansas Teacher Retirement System (ATRS) Board of Trustees that I was retiring after a decade as its Executive Director effective December 31, 2018. (As background, I have been eligible to retire for over 6 years. Slowly ATRS has been transformed from a troubled system to one of the top-rated, public pension funds in America with strong benefit and sound investment policies in place. Based on top 1% returns for ATRS over the last several years, strong current actuarial position, and no major legislative initiatives for 2019, the timing is right for a leadership change in calm waters.)

I also would like to reiterate that ATRS is ready to continue as class representative for all the reasons I provided in my affidavit previously filed. Moreover, the current schedule provides for a new Executive Director to be chosen by the Board *well before* December 31, 2018. Additionally, Clint Rhoden (operations director), Martha Miller (staff attorney), Rett Hatcher (a deputy director), and Rod Graves (a deputy director) are also well qualified to act on behalf of the class in ATRS' role as class representative. I will, of course, be in court on October 15, 2018 as directed, accompanied by Clint Rhoden (operations director) to ensure ATRS is ready to fulfill any duty or obligation remaining.

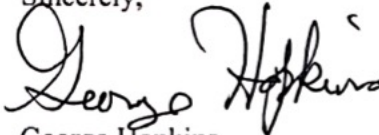
I have reviewed the proposed settlement. It is clear to me that the Special Master has put a great deal of thought and effort into reaching a proposed agreement that benefits the Class but also allows for closure.

George Hopkins, Executive Director – 501-682-1820 – Email: georgeh@artrs.gov

Honorable Mark L. Wolf
October 11, 2018
Page Two

The Court should know that ATRS, through lessons learned, has already instituted certain changes and requirements for outside counsel as a result of this case, including: (1) specific retainer agreements for each separate matter; (2) a ban on referral fees of any kind; (3) a reminder to each outside counsel of their obligation to abide by all ethical rules and to strive to achieve ethical best practices with a focus on this case for a compass.

Sincerely,



George Hopkins

**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

**LIEFF CABRASER HEIMANN & BERNSTEIN, LLP'S OBJECTION TO SHARING
RESPONSIBILITY WITH LABATON SUCHAROW LLP FOR THE PROPOSED
ADDITIONAL PAYMENT TO THE SPECIAL MASTER, AND TO ANY FURTHER
PAYMENTS ABSENT A FULL AND FINAL ACCOUNTING**

In its Order dated August 28, 2018 (ECF No. 461), the Court proposed the issuance of an Order “amending its prior orders to require that Labaton Sucharow, LLP (‘Labaton’) pay from fees it previously received an additional \$750,000 to the Clerk to provide a fund for payment of past and possible future fees and expenses” of the Special Master. The Court requested that the parties file any objections to such a proposed order by September 7, 2018, a deadline that was then extended to September 18, 2017 (ECF No. 465). Loeff Cabraser Heimann & Bernstein, LLP (“Loeff Cabraser”) filed its initial objection and request for clarification of that proposed order on September 18, 2018 (ECF No. 466) (“Initial Objection”).

In its Initial Objection, Loeff Cabraser stated that to the extent the Court intended Loeff Cabraser to share in the obligation to pay an additional \$750,000 for the benefit of the Special Master,¹ Loeff Cabraser objected to the proposed additional payment as excessive in itself, as well as to the Special Master’s fees and expenses as excessive in their totality, and that any additional payments to the Special Master should be deferred until a full and final accounting can be done, which the Court has indicated may come only at the conclusion of the *de novo* review of the Special Master’s Report. *Id.* (citing Hearing Tr., August 9, 2018, at 53).² Loeff Cabraser further stated that, at a minimum, any order regarding additional payments to the Special Master should be deferred until the terms of any proposed partial resolution of issues raised by the

¹ Loeff Cabraser sought, in the first instance, clarification as to whether the proposed payment of additional fees to the Special Master was to be made by Labaton alone, as the August 28 Order plainly appeared to state. *Id.*

² Although in its August 10, 2018 Order (ECF No. 445), the Court denied Customer Class Counsel’s Motion for an Accounting and Clarification that the Special Master’s Role has Concluded (ECF No. 302), it did so “[f]or the reasons stated in Court” the day prior. And during the August 9, 2018 hearing, the Court stated that it was “planning to leave any issues concerning the master’s cost to the end of the proceedings,” and that such “issues” accordingly were not ripe. Hearing Tr., August 9, 2018, at 53. The Court did not state, as the Special Master suggests, that such an accounting would not be done eventually and at the appropriate time. *See* Special Master’s Response to Objections of Loeff Cabraser and Thornton Law Firm to Sharing Responsibility with Labaton for Payment of an Additional \$750,000 (ECF No. 486) at 4.

Special Master's Report and Recommendations insofar as they relate to Labaton and the ERISA Firms were disclosed to the Court and to Lief Cabraser. *Id.*

On September 21, 2018, after clarifying that, contrary to the August 28 Order's apparent terms, the Court's intention was that all Customer Class Counsel (*i.e.*, Labaton, Lief Cabraser, and the Thornton Law Firm LLP ("Thornton")) share responsibility for the proposed additional fee payment on the same basis as prior payments for the Special Master, the Court ordered that Lief Cabraser be afforded the opportunity to "amplify" its reasons for its objections to sharing in that proposed fee payment "after the terms of the Master's proposal concerning a possible agreed resolution of issues relating to Labaton is disclosed." ECF No. 470. The Court set deadlines of October 2, 2018 for the Special Master to file his proposal, and October 9, 2018 for Lief Cabraser to file its additional objection, and set a hearing date for October 15, 2018. *Id.* The Court subsequently granted an extension to the Special Master for filing his proposal to October 9, 2018 (ECF No. 480), and extended the deadline for Lief Cabraser's additional objection to sharing in the proposed fee payment to October 11, 2018. (ECF No. 483).

On October 10, 2018, the Special Master filed his supplemental report concerning the proposed partial resolution of issues between himself, Labaton, and the ERISA Firms for the Court's consideration. ECF No. 485 ("Proposed Resolution"). Attached as Exhibit A to the Proposed Resolution is Labaton's "Supplemental Response," which sets forth Labaton's understanding of the proposed terms. ECF No. 485-1 ("Labaton Response"). Most pertinent, for present purposes, among the terms proposed by the Special Master and Labaton is that Labaton pay only a portion of the Special Master's proposed \$750,000 additional fee. The Special Master and Labaton also appear to have diverging views as to what Labaton's share should be.

The Special Master states that Labaton "agrees to pay its *proportionate share* of the remaining amounts due to the Special Master and his team for their unpaid work." Proposed

Resolution at 11 (emphasis added). To date, and throughout this investigation, Labaton's proportionate share of the Special Master's costs has been 47%, which directly corresponds to the amount of fees that Labaton received out of the fees that were previously paid to Customer Class Counsel (separate from the fees delineated for the ERISA Firms or Chargois). Lief Cabraser, which was paid 24% of the fees previously paid to Customer Class Counsel (separate from the fees paid to the ERISA Firms or Chargois), has accordingly paid 24% of the Special Master's fees and costs to date. *See* Response and Objections to the Special Master's Report and Recommendations (ECF No. 367) ("LCHB Response") at 3, 7-8, 41, 64-65, 75, 77, 96. However, Labaton now states that it agrees to pay only a reduced share of 33 1/3% of the Special Master's outstanding costs, which at present would be just \$250,000. Labaton Response at 9.

All else being equal, there simply is no justification for Labaton taking on a reduced responsibility (*i.e.*, less than 47%) for the Special Master's fees and costs at this time. That said, it is Lief Cabraser's position that it should not be required to share in the proposed payment for the Special Master at all. In further support of its initial objection to sharing in the proposed \$750,000 payment for the Special Master, Lief Cabraser states as follows:

First, as has been true since August 2017 when the Chargois issue first came to light, the Special Master's work in connection with this most recent fee request appears primarily (if not exclusively) to have concerned Labaton-specific issues in these proceedings. Lief Cabraser has to date paid \$912,000 towards the fees and expenses of the Special Master's investigation.³ *See* LCHB Response (ECF No. 367) at 3, 7, 41, 64-65, 75, 77. As the Special Master's Report itself acknowledges, Lief Cabraser itself was not privy to the actual details of the "Chargois Arrangement" as described in that Report, and was itself directly (and inaccurately) told by co-

³ This is *in addition* to the \$2.39 million in attorney time and costs incurred by Lief Cabraser in responding to the Special Master's investigation between February 2017 and June 2018. *Id.* at 6-7, 64-66, 99.

counsel that Chargois was performing an “important role” as local counsel for Labaton and/or ATRS. *Id.* at 2, 5, 8, 49-57, 63-64. Based on that erroneous description, and its resulting belief as to the role Mr. Chargois was performing in the litigation, Lieff Cabraser agreed to a reduction in its own proposed allocated fee (on the order of \$1 million) in order to compensate Mr. Chargois for his valuable services as “local counsel.” *Id.* at 5-6, 97. Lieff Cabraser’s position is that it quite simply has paid enough for an investigation that long ago went far beyond examining the basic inadvertent lodestar reporting error that precipitated this investigation, and moved into matters concerning which—according to the findings of the Special Master—Lieff Cabraser itself was “misled.” *See* LCHB Response (ECF No. 367) at 96 (citing Special Master’s Report at 352). For that reason alone, Lieff Cabraser should not be required to pay any portion of the \$750,000 proposed additional payment for the Special Master, or any future payment.

In addition, Lieff Cabraser should not be required to pay for the time that the Special Master has spent negotiating and documenting the Proposed Resolution with Labaton and the ERISA Firms, which involved no consultation with Lieff Cabraser. Indeed, throughout the entire time that negotiations (initiated sometime prior to August 9, 2018, *see* ECF No. 444) to “resolve” issues surrounding the Special Master’s report were ongoing, Lieff Cabraser was directly engaged by the Special Master for less than *one hour* regarding the aspects of Special Master’s Report and Recommendations that apply specifically to Lieff Cabraser—including a “face to face” meeting that two of Lieff Cabraser’s senior attorneys traveled to and attended in Boston on September 11, 2018.⁴

⁴ Lieff Cabraser takes specific exception to the Special Master’s claims that Lieff Cabraser played a “central role” along with the other firms “in the Special Master’s investigation and the settlement process,” and that Lieff Cabraser has also “contributed significantly to the Master’s workload and to the concomitant costs of the Investigation.” *See* Special Master’s Response to Objections of Lieff Cabraser and Thornton Law Firm to Sharing Responsibility with Labaton for Payment of an Additional \$750,000 (ECF No. 486) at 5. These statements are not factual, for the reasons amply explained in Lieff Cabraser’s Response (ECF No. 367) to the Special Master’s

Second, in the alternative, having vacated the prior fee award, the Court has indicated that it intends to award the attorneys' fees in this matter at a future time, and that it may itself allocate the fees awarded to plaintiffs' counsel. *See* Orders dated June 22, 2018 (ECF No. 331) and August 10, 2018 (ECF No. 445); Hearing Tr., August 9, 2018, at 33. Any allocation of responsibility for the Special Master's \$750,000 proposed additional payment (as well as any future payments) accordingly should be decided in conjunction with the allocation of the attorneys' fees in this case, as well as the ultimate allocation of responsibility for the costs of the Special Master. *See* Hearing Tr., August 9, 2018, at 33:14-19.⁵ Having already received payments totaling \$3.8 million to date, it is only fair at this point for the Special Master to wait to be paid in accordance with the Court's direction along these lines, rather than for the Special Master to be paid immediately.

Third, in connection with the final accounting of the Special Master's fees and expenses, Loeff Cabraser may challenge the fees and expenses charged by the Special Master to date, which may result in their reduction. No additional payments should be ordered before that accounting has been completed and any challenges decided.

Fourth, and finally, should the Court require (notwithstanding all of the above) that Loeff Cabraser share in the proposed \$750,000 payment to the Special Master and that this payment be made now, there is no basis to require Labaton to bear any less than 47% of that cost, as Labaton has done with all prior payments to the Special Master to date.

In addition to and apart from the foregoing, the Proposed Resolution impacts Loeff

Report, and as exemplified by Loeff Cabraser having been almost entirely excluded from the purported "settlement process."

⁵ THE COURT: So if you look at the 1987 application note to Rule 53(b), it says, The party whose unreasonable behavior has occasioned the need to appoint a master may properly be charged all or a major portion of the master's fees. It may be proper to revise an interim allocation after decision on the merits.

Cabrer in several ways on which we will wish to comment at the appropriate time.

Dated: October 11, 2018

Respectfully submitted,

By: /s/ Richard M. Heimann

Richard M. Heimann (*pro hac vice*)

Robert L. Lief (*pro hac vice*)

275 Battery Street, 29th Floor

San Francisco, California 94111

Tel: (415) 956-1000

Fax: (415) 956-1008

Steven E. Fineman

Daniel P. Chiplock (*pro hac vice*)

250 Hudson Street, 8th Floor

New York, New York 10013

Tel: (212) 355-9500

Fax: (212) 355-9592

Counsel for Lief Cabrer Heimann & Bernstein, LLP

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will thereby be served on this date upon counsel of record for each party identified on the Notice of Electronic Filing.

October 11, 2018

/s/ Richard M. Heimann

Richard M. Heimann

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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

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,
Plaintiffs,

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,
Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,
Defendant.

No. 12-cv-11698 MLW

**THORNTON LAW FIRM LLP'S
SUPPLEMENTAL OBJECTION TO PROPOSED ORDER
REGARDING ADDITIONAL FUNDS FOR SPECIAL MASTER**

Pursuant to the Court's August 28, 2018 Order (ECF 461), on September 18, 2018 (ECF 467), the Thornton Law Firm advised the Court of its objection to the Court's proposal that an additional \$750,000 be paid for past and future fees and expenses of the Special Master. The Court's September 21, 2018 Order (ECF 470) clarified that the Court's proposal was that payment should be made from Labaton, Lieff Cabraser, and the Thornton Law Firm, and not solely from Labaton. The Court's September 21, 2018 Order also permitted Lieff Cabraser and the Thornton Law Firm to, by October 9, 2018, "amplify the reasons for their objections after the terms of the Master's proposal concerning a possible agreed resolution of issues relating to

Labaton is disclosed.” Given that the Special Master postponed filing his agreement with Labaton, by motion dated October 5, 2018 (ECF 482) and granted October 8, 2018 (ECF 483), Lief Cabraser and the Thornton Law Firm moved to extend the deadline for filing their supplemental objection to the \$750,000 payment to October 11, 2018. The Thornton Law Firm now supplements its September 18, 2018 filing (ECF 467) as follows:

1. As set forth in its September 18, 2018 filing, the Thornton Law Firm acknowledges that the Special Master must be paid for his work so long as the Court ensures that his costs and fees are reasonable. The Thornton Law Firm understands from counsel for the Special Master that the Special Master has already incurred fees of approximately \$550,000 of the requested \$750,000.

2. The Thornton Law Firm clarifies that its September 18, 2018 (ECF 467) filing did not mean to suggest that the Special Master should not be able to request leave of Court to file additional documents, but only to emphasize that the Special Master should receive leave of Court prior to drafting or filing such documents.¹ The Thornton Law Firm was not and is not seeking a modification of the Court’s August 10, 2018 Order (ECF 445) in this regard.

3. The Thornton Law Firm notes that Labaton’s proposed resolution with the Special Master (ECF 485-1 at 9) caps Labaton’s contributions at 33.33% of the Special Master’s fees and expenses. In the past, Labaton has paid its proportional share of the Special Master’s fees and expenses in accordance with the original fee award (i.e., 47%). Although it is inconsistent with

¹ In a document filed today (ECF 486), the Special Master alleges that the Thornton Law Firm’s request that the Special Master “refrain from filing or drafting documents that the Court does not request” somehow “grossly mischaracterizes the Special Master’s past and current filings.” As with many of the Special Master’s factual findings and legal conclusions, this is another serious (and hyperbolic) but unwarranted charge. For instance, on August 6, 2018, the Special Master filed a ten-page “cover memorandum” (ECF 423). Although the Court had requested that the Special Master supplement the record (ECF 385 at ¶ 3), the Court did not order the Special Master to file a lengthy narrative regarding his findings.

past practice, the Thornton Law Firm does not object to this new arrangement.

Respectfully submitted,

/s/ Brian T. Kelly
Brian T. Kelly (BBO No. 549566)
Joshua C. Sharp (BBO No. 681439)
NIXON PEABODY LLP
100 Summer Street
Boston, MA 02110
Telephone: (617) 345-1000
Facsimile: (844) 345-1300
bkelly@nixonpeabody.com
jsharp@nixonpeabody.com

Dated: October 11, 2018

Counsel for the Thornton Law Firm LLP

CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically on October 11, 2018 and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing (“NEF”).

/s/ Joshua C. Sharp
Joshua C. Sharp

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

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

Plaintiffs,

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,

Plaintiffs,

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,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 12-cv-11698 MLW

**COMPETITIVE ENTERPRISE INSTITUTE'S RESPONSE
TO OCTOBER 11 ORDER**

In response to the Court's order of October 11, 2018 (Dkt. 488), Competitive Enterprise Institute states as follows:

CEI attorney Theodore H. Frank previously planned to attend and observe the first two hours of the October 15, 2018, 2 P.M. hearing. CEI wishes to participate as *amicus* to the extent that (1) the Court would find CEI's participation helpful and (2) the Court would permit Mr. Frank to leave at or before 4 P.M. so that he may fulfill a commitment, previously scheduled months before, to speak at Harvard Law School that evening. CEI is otherwise prepared to comment as *amicus*, to the extent the Court would find it helpful and request it do so, on the Proposed Resolution at the appropriate time.

Dated: October 12, 2018

/s/ Theodore H. Frank

Theodore H. Frank (*pro hac vice*)
COMPETITIVE ENTERPRISE INSTITUTE
1310 L Street NW, 7th Floor
Washington, DC 20005
Telephone: 202-331-2263
Email: ted.frank@cei.org

M. Frank Bednarz (BBO No. 676742)
COMPETITIVE ENTERPRISE INSTITUTE
1145 E Hyde Park Blvd. Unit 3A
Chicago, IL 60615
Telephone: 202-448-8742
Email: frank.bednarz@cei.org

*Attorneys for Amicus Curiae
Competitive Enterprise Institute
Center for Class Action Fairness*

CERTIFICATE OF SERVICE

I certify that on October 12, 2018, I served a copy of the forgoing on all counsel of record by filing a copy via the ECF system.

Dated: October 12, 2018

/s/ Theodore H. Frank _____
Theodore H. Frank