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

THE COMPETITIVE ENTERPRISE INSTITUTE'S MOTION ON BEHALF OF THE CENTER FOR CLASS ACTION FAIRNESS, SEEKING CLARIFICATION ON PARTICIPATION AT THE UPCOMING HEARING

The Competitive Enterprise Institute ("CEI") and the Center for Class Action Fairness ("CCAF") filed a memorandum in support of a baseline $50,000,000 (16.75%) attorneys' fee award on November 20, 2018. Dkt. 522 ("CCAF Memo"). Since then, Class Counsel collectively filed over 1000 pages of briefs and exhibits, including three briefs that specifically quarrel with the CCAF Memo. *See* Dkts. 530 (Thornton Law Firm), 532 (Joint Class Counsel), and 534 (Labaton).

The Court has scheduled a hearing for June 24 (and subsequent days as necessary), and the first topic on the agenda is "argument on whether the initial fee award of $74,541,250, constituting approximately 25% of the common fund, is reasonable." Dkt. 543 ("Agenda Order") at 2. CCAF can prepare to speak the hearing, but the Court's May 31 orders do not say whether CCAF is invited to participate. The issue is especially unclear to CCAF given its intervening relocation to the Hamilton Lincoln Law Institute, and resolution of this ambiguity affects where it devotes scarce resources on its shoestring budget and extensive docket.[1] **To be clear, CCAF does not seek to cross-examine witnesses at the hearing.** It would not seem proper to elicit testimony given that CCAF has not been appointed to any official role in this case.

CCAF can instead make itself available to answer questions and present argument in support of its prior filings—if the Court would find this helpful. Because the parties and Special Master do not disagree on the overall 25% attorneys' fee award, CCAF would represent the interests of absent class members and assist the Court by defending the CCAF Memo in support of a more reasonable (though

[1] CCAF left CEI and became part of the Hamilton Lincoln Law Institute ("HamLinc") as of February 1, 2019. However, the Competitive Enterprise Institute is formally party to this motion because only CEI has been granted leave to participate as *amicus*. CEI fully supports HamLinc's substitution for CEI as *amicus,* as it previously moved on April 22, 2019. Dkt. 540. As a reminder, the parties and Special Master do not oppose this prior motion to the extent it seeks "the substitution of HamLinc for CEI as a technical matter for purposes of the docket." *Id.* at 2. Substitution would reduce the workload of both nonprofit organizations—HamLinc and CEI—because it would eliminate the need for coordination between the two organizations.

still lucrative) percentage of a $300 million megafund. CCAF would also defend arguments that it has previously advanced concerning "whether: contract attorneys should be treated as an expense . . . reasonable rates for staff attorneys in their fee petition; and . . . errors other than double-counting in their fee petitions." Agenda Order at 3. Finally, CCAF would expand on its prior argument that the structural changes proposed by the Partial Resolution between the Special Master and Labaton provide no relief to the class, nor even future classes. Dkt. 515 at 10-12 (CCAF Response to Partial Resolution). In particular, the "'Phase I Report' concerning Labaton" (Agenda Order at 4, hearing topic 5) suggests that Labaton has not even complied with the local rules of the Southern District of New York, which it represents as requiring disclosure of all referral fees. While the Phase I Report identifies *In re Petrobras Securities Litigation*, No. 14-cv-9662 (S.D.N.Y.) as a referral fee case, no disclosure to that court appears to have been made, and Labaton's outside counsel twice failed to respond to CCAF's requests for clarification on the issue.

Therefore, CEI seeks clarification whether CCAF may participate once again as an *amicus curiae*. If granted, CCAF will send at least one attorney to attend the hearing scheduled June 24-26 prepared to answer the Court's questions and rebut Class Counsel's arguments.

All three Class Counsel firms oppose CCAF's participation in the upcoming hearing, although Lieff and Labaton do not oppose seeking clarification from the Court *per se*. The remaining plaintiffs' firms, defendant, and the Special Master take no position on the motion.

WHEREFORE, CEI respectfully requests that the Court grant its motion for clarification regarding CCAF's further participation in this case.[2]

[2] Due to its move to the newly-created Hamilton Lincoln Law Institute, CCAF also has the capacity to accept appointment as guardian *ad litem* on behalf of the class. Therefore, contrary to a prior representation (Dkt. 496 (Tr. 10/15/2018) at 57), CCAF could accept an appointment as guardian *ad litem* with Burch Porter pursuant to its motion (Dkt. 126) and the memorandum detailing the terms of such appointment (Dkt. 515). The Court has previously taken CCAF's motion for appointment under advisement. Dkt. 192; Tr. 8/9/18 at 20; Tr. 11/7/18 at 96.

MEMORANDUM IN SUPPORT OF MOTION

CCAF wishes to address Class Counsel's various responses to the CCAF Memo (Dkt. 522) in support of a baseline $50,000,000 (16.75%) attorneys' fee award. CCAF drafted its memorandum in just twelve days from the Court's order authorizing its filing (Dkt. 518), and so was not able to illustrate Class Counsel's strategic churn of contract and staff attorneys as vividly as it would have preferred. Class Counsel collectively filed three responses to the CCAF Memo. *See* Dkts. 530, 532, and 534.

CCAF had always intended to discuss responses to its Memo and the Report of Hon. Garrett E. Brown ("Phase I Report," Dkt. 539-1) at the next hearing, which was initially planned to occur in January following submission of the Phase I Report. *See* Dkt. 519 (Tr. 11/7/18) at 110. CCAF was contacted by outside counsel for Labaton concerning its availability for hearing dates in January—which confirms CCAF's understanding that it was invited—but in response to this proposed motion Class Counsel now insists CCAF may not attend the upcoming hearing. CEI, on behalf of CCAF, would like to clarify whether CCAF may participate in the June 24-26 hearing.

CCAF's past participation in this case has been helpful to the Court. *See* Dkt. 192 (finding amicus brief "helpful"); Dkt. 460 at 8 (same); Dkt. 448 (Pub. Tr. 8/13/2018) at 20 ("I found the memoranda you've submitted both in 2017 [and recently] to be helpful. For example, you're the one who identified the Rule 60(b) issue, which was helpful; and some of the authorities in your recent briefs were -- recent brief were helpful, citing cases that I read with care, citing of the statement were helpful."); Dkt. 519 (Tr. 11/7/2018) at 96 ("very helpful" submissions). And CCAF has been the only participant in these proceeding raising certain issues.

Therefore, CEI seeks clarification of whether CCAF will again be permitted to participate. CCAF would make itself available for questions from the Court and to present counterarguments to Class Counsel, as outlined below. Additionally, CCAF could focus any subsequent memorandum to issues the Court wishes to explore at the hearing, preserving judicial and private nonprofit resources.

A. Outline of Arguments CCAF Could Present June 24-26

CCAF hopes to participate in three topics the Court has identified (1, 2, and 5), all of which directly pertain to prior CCAF filings. For most of these arguments, CCAF is the only participant opposing Class Counsel and in favor of enhancing recovery for innocent absent class members.

First, the primary subject of the CCAF Memo was "whether the initial fee award of $74,541,250, constituting approximately 25% of the common fund, is reasonable." Agenda Order at 2. CCAF argues this was an excessive figure for a $300 million megafund and that Class Counsel misrepresented Brian T. Fitzpatrick's article in order to get it approved. CCAF Memo at 4-6. The Special Master did not recommend adjusting the overall fee award, so without CCAF participation, no adversarial argument on this topic will occur at the hearing.

Second, the "rates for staff attorneys" and contract attorneys, and erroneous overbilling were the secondary subject of the CCAF Memo. Agenda Order at 3; *compare* CCAF Memo at 12-20, 35-37. CCAF has been the lead entity seeking judicial scrutiny of this practice, which has overbilled shareholders and other class members by billions of dollars. Jennifer Smith, *Dispute Arises Over Cost of Temp-Help Lawyers*, Wall St. J. (Apr. 14, 2013). CCAF's experience on the question was what led to its being interviewed by the *Boston Globe* for the news story that led to these hearings. While the Special Master mostly agrees with CCAF that contract attorneys should be billed at cost, only CCAF advocates realistic market rates for staff attorneys. And CCAF flags apparent churn and erroneous billing that no other party has raised, so CCAF's participation on this topic would also benefit the Court.

Finally, CCAF remains a skeptic of the proposed Partial Resolution between Labaton and the Special Master. While some plaintiffs' counsels also oppose the proposed Partial Resolution because it implicitly places too much responsibility on Lieff and TLF for the double counting error, CCAF uniquely opposes it for the lack of remediation for the class. Dkt. 515 (CCAF Opposition), at 10-12. The "Phase I Report" appears to illustrate this problem by highlighting how widespread referral

agreements are, while proposing a token work requirement to avoid being classified as a bare referral fee. The Report also identifies a referral fee arrangement that Labaton appears not to have disclosed to the Southern District of New York in 2018.

The Court may benefit from CCAF's advocacy on all of these issues. Without it, the adversarial process might break down, because no other participant will advance these arguments. The lack of adversarial advocacy often harms the class. *E.g., Redman v. RadioShack Corp.*, 768 F.3d 622, 629 (7th Cir. 2014) (discussing the limits of the adversarial system of justice in in this context).

1. Argument on Overall Fee Award

CCAF intends to argue in favor of a 16.75% overall fee award, which is generous for a settlement of this size reached before a single deposition was taken. (Indeed, a 16.75% fee award probably understates the degree of churn and overstates the degree of risk, but the special master did not pursue lines of inquiry that CCAF would have if it had been appointed guardian *ad litem* in 2016.[3]

Class Counsel argue that the First Circuit–out-of-step with the rest of the country and rejects the proposition that the reasonable percentage of attorneys' fees awarded from a common fund settlement tends to decline as the fund size increases (often called the "sliding scale"). But the First Circuit has not rejected the "megafund" analysis. Class Counsel cites individual district court decisions allegedly rejecting the sliding scale approach, but none rely on any First Circuit law in doing so. Moreover, one of the cases Class Counsel cites in fact credited the sliding scale approach—expressly reducing a fee award in part based on the percentage being excessive for the fund size. *See In re Neurontin Mktg. & Sales Practices Litig.*, 58 F. Supp. 3d 167, 172 (D. Mass. 2014) ("The sizes of fee

[3] For example, the Special Masters R&R evidences no inquiry into whether Class Counsel received third-party litigation funding or executed a risk-transfer agreement, which would have disclosed internal understandings of the *ex ante* risk of the litigation. The R&R does not disclose the degree to which it was understood that State Street would settle once government investigations concluded, nor the degree to which billing reflects risk-fee churn.

awards in similar mega-cases suggest that 33 1/3% of the settlement fund is too high a percentage."). The First Circuit has not addressed the issue one way or another, but overwhelming authority nationwide supports the sliding scale approach for percentage-of-fund fee awards.

The sliding scale has a sound basis because it mimics market-rate contingency fees negotiated by sophisticated clients. When securities clients actually monitor attorneys' fees—which ATRS admittedly refused to do—the resulting fee is generally set using a sliding scale because knowledgeable clients understand that larger cases take proportionally less work. For example, the New York Comptroller, acting on behalf of the New York State Common Retirement Fund (NYSCRF), recently objected to the fee request in another securities settlement. *See Knurr v. Orbital ATK, Inc., et al.*, Dkt. 459-1, No. 16-cv-1031 (E.D. Va. May 24, 2019), attached as Exhibit A to the contemporaneously-filed Declaration of M. Frank Bednarz ("Bednarz Decl."). NYSCRF, which has represented shareholders in several megafund settlements, objected to a fee request of 28% (with 1.8 lodestar multiplier) in a settlement worth $108 million and suggested that the court in that case instead use a fee of about 17.46%. *Id.* at 2. In its own cases, NYSCRF requires counsel to agree to a fee grid capping percentage fees based on the size of the fund. For a $300 million settlement reached after a motion to dismiss but before motion for certification or summary judgment, NYSCRF's fee grid would provide fees of $32.5 million—about 10.8%. *See id.* at 4 ("Tier III," second column, $28.5 million + 8% of amount over $250 million). Because ATRS refused to control or even monitor attorneys' fees, the Court must pick up the slack on behalf of absent class members. *See* Dkt. 362-21 (Hopkins testifying, "I always have tried to leave it up to the federal judge to say what's fair and reasonable.").

Class Counsel further argue that CCAF's generous suggested fee should not be approved because "[t]he lodestar multiplier resulting from the 16.7% fee award [CCAF] proposes would be the lowest lodestar multiplier ever awarded in a similarly-sized case in the First Circuit." Dkt. 532 at 3. In fact, the First Circuit affirmed a multiplier less than 0.5 where Judge Young discerned that most of

the work had been performed in other litigation. *Heien v. Archstone*, 837 F.3d 97, 99 (1st Cir. 2016). *Heien* is not "similarly-sized" only because it was a much *smaller* settlement. Gerrymandering cannot substitute for legal analysis.

There's simply nothing sacrosanct about generous fee multipliers applied to already-generous billing rates, especially given the "strong presumption that the lodestar is sufficient" without a multiplier. *Perdue v. Kenny A.*, 130 S. Ct. 1662, 1669 (2010). Moreover, as CCAF explained in its Memo (Dkt. 522 at 20-24), a 16.75% fee award constitutes a healthy 1.82 multiplier on realistic market billing rates for contract and staff attorney (see below). Even if Class Counsel's claimed $37 million lodestar were credible, "only" compensating Class Counsel 1.34 times $515/hour for the time of contract attorneys paid $50/hour could not imaginably constitute an abuse of discretion.

2. Argument on Attorney Rates and Excess Billing

CCAF intends to argue in favor of more realistic billing rates for contract and staff attorneys. It will further produce charts demonstrating that most of the billing in this case occurred in the months following agreement-in-principle in the "template" *BONY Mellon* action, when little risk remained—including 10 days of extraordinary churn after the agreement-in-principle in *this* case was reached.

Class Counsel fails to show that their lodestar rates for contract and staff attorneys approximate actual market rates, and instead cites to generally-unopposed approval of above-market rates in other cases. Unable to deny that private clients don't pay $415-515/hour for contract or staff attorneys, Lieff invents wholly fictional distinctions between their staff attorneys and those employed by sophisticated clients. "Most Big Law firms use staff attorneys (or contract attorneys) for first-level document review, mostly devoted to determining whether documents are relevant and are privileged or should otherwise be withheld from production." Dkt. 534 at 22. In fact, Big Law firms use contract and staff attorneys for exactly the same sorts of tasks Lieff identifies: preparing memos for witness and issue depositions. Contrary to Lieff, sophisticated clients do not pay ten times as much for

contract attorneys to review an opponent's documents as the party's own documents. For example, in patent litigation, Big Law firms often represent non-practicing plaintiffs with very few documents who seek voluminous discovery from accused infringers with mountains of production records and email (often in foreign languages). Because Class Counsel continues to deny that the market rate for contract attorneys is cost and that the rate for staff attorneys is lower than the rate for mid-level associates, these propositions should be proved by discovery from defense counsel or a third party knowledgeable of market rates actually paid by clients. Actual market rates—not awards approved by other courts—are the benchmark for lodestar analysis.

Of course, Big Law clients would not spend 51,594.3 hours for staff and contract attorneys to prepare witness and memoranda in a case where not a single deposition was taken. The *quantity* of hours billed in this case is as excessive as the rates.

Class Counsel employed a platoon of reviewers after the $300 million settlement was already in hand. Class Counsel criticizes CCAF for stating that the settlement-in-principle was reached on June 21, 2015 rather than June 30, the date Lawrence Sucharow swore it was reached. Dkt. 532 at 19 n.23 ("CEI erroneously claims that the settlement in principle was reached in the State Street litigation on June 21, 2015 . . . In actuality, however, the agreement in principle to settle was not reached until June 30, 2015"). But on *June 21*, 2015, Garrett Bradley emailed Damon Chargois: "We have reached a settlement in principle for $300,000,000 with the defendant but it involves not just our consumer class case, but also obligations to SEC and DOL as well as the Erisa class case which was merged with ours by the Judge for settlement discussions." Dkt. 401-271 (R&R Ex. 260).

From: Garrett Bradley
Sent: Tuesday, June 21, 2016 3:26 PM
To: Damon Chargois
Subject: Fwd: State street fee regarding local counsel

Damon,

As always it was a pleasure to speak with you today. & As requested, I am laying out to you where we are on the State Street matter and below is the email that we referenced on the call. & That email established that Lieff, Thornton and Labaton would "share" your obligation whatever it turned out to be. & The status of the case has gotten better but yet more confusing when it comes to fees.

We have reached a settlement in principle for $300,000,000 with the defendant but it involves not just our consumer class case, but also obligations to SEC and DOL as well as the Erisa class case which was merged with ours by the Judge for settlement discussions. & DOJ also has a separate settlement that is timed to be announced with ours. & As we spoke this morning, a few matters got screwed up today but we are hoping to have a status conference with the court on Thursday (he is on vacation all July) with a preliminary approval hearing sometime in August. & Given that we have to do a CAFA notice, we are still hoping for a final date this late this year. & We also have to post bonds or wait the 30 day appeal period to take fees [redacted] & It is going to be tight.

Since our last conversation some things have changed. & The fee we will apply for is $70,900,000. This will be for Lief, Thornton, Labaton, you and now three Erisa firms. & We are attempting to hold the Erisa firms to 10%

Dkt. 401-271 (R&R Ex. 260) at 1 (highlighting added).

The settlement did not get larger after this date. In fact, the most noticeable difference between the email and the eventual settlement is that Class Counsel sought $75 million in attorneys' fees instead of the $70.9 million figure Bradley advised. Coincidentally—or not—this reduction of $4.1 million in class relief corresponds exactly to the fee Class Counsel agreed to divert to Chargois.

Between June 21 and June 30, 2015 (inclusive), an additional 2096.2 hours were billed by Class Counsel, which continued to employ an astonishing 33 contract and staff attorneys working full-time on document review and unnecessary memos for a case that had already settled in principle according to Garrett Bradley.

While the Special Master evaluated the *quality* of the work performed by the contract and staff attorneys, it is not clear whether the reasonableness of the *quantity* of hours expended was evaluated. Unreasonable hours may not be compensated even if the time resulted in detailed (but pointless) legal

memoranda. Given that none of the law firms nor the Special Master flagged the obviously-erroneous billing entry charging 45 hours from a single attorney in one day (Dkt. 522 (CCAF Memo) at 36), skepticism is warranted when Class Counsel attempts to shield its hours behind the Special Master's high-level finding that the reports were "reasonable and accurate." Dkt. 534 at 16. To the extent that Class Counsel hides behind "portions of the record that remain under seal" (Dkt. 532 at 22), CCAF offers to execute the protective orders and seek targeted discovery to show that these hours were not directed to benefit the class, but were intended to "jack up" the lodestar of a case certain to settle.[4]

3. Opposition to Partial Resolution Bolstered by Phase I Report

Finally, CCAF would like to respond to the Report of Hon. Garrett E. Brown, which confirms CCAF's argument against the adequacy of purported relief provided by the proposed Partial Resolution with Labaton. Dkt. 515 (CCAF Response to Proposed Partial Resolution), at 10-12.

First, CCAF notes the incredibly low threshold for Labaton to avoid paying "bare" referral fees going forward. A lawyer who simply "review[s] the complaint and/or theories of the case" is deemed not to have received a bare referral fee. Dkt. 539-1 at 15. Chargois himself could have easily done this, if he wanted; in other cases (and possibly in this case) he was sent copies of pleadings. *E.g.,* Dkt. 357 (Special Master's R&R) at 102. If Chargois had spent a few dozen hours reviewing the pleadings, his windfall would still be grossly disproportionate and possibly unethical, yet this would

[4] Thornton (TLF) takes exception to the Special Master's use of this quote (Dkt. 530 at 7), but by agreement among Class Counsel, the fee division for TLF depended on the relative lodestars of the three firms. *See* Dkt. 357 (Special Master's R&R) at 51. More generally, attorneys' fee awards—even those based on a percentage of fund—are informed and cross-checked by lodestar, which provides ample incentive to pad the lodestar, contrary to Class Counsel. Dkt. 532 at 20. (Incredibly, Class Counsel argues that it cannot be awarded what it alleges to be "only" a 1.34 multiplier of its claimed hours, yet a few pages later argues it would have no possible to incentive to bill excessive hours!) The incentive was peculiarly strong in this case, where Class Counsel had agreed to split fees based on lodestar, leading to a land rush between the firms that was well underway when Mr. Bradley discussed jacking up his firm's lodestar in February 2015. *See* Dkt. 522 (CCAF Memo) at 30 n.16.

not constitute a "bare" referral as Labaton understands it. *Cf. Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 137-38 (2d Cir. 2016) (describing alleged scheme to assign unnecessary work to politically-connected referring firm so that it could be paid undisclosed $112,500 "kickback"). The narrow definition of bare referral fees suggests that Labaton's review may have glossed over problematic arrangement and also suggests the proposed injunction on Labaton will not meaningfully protect future securities classes.

Second, the list of settlements where Labaton had a referral obligation raises a further questions about the extent these referral arrangements have been disclosed before the appropriate courts. For example, it appears that Labaton did not inform the court presiding over *In re Petrobras Securities Litigation*, No. 14-cv-9662 (S.D.N.Y.) that it had a referral fee obligation, although Labaton correctly understands "Rule 23.1 of the Local Rules of the United States District Courts For the Southern Districts of New York, . . . requires disclosure of 'any fee sharing agreements with anyone.'" Dkt. 428 (Johnson Decl.) at 2.[5] CCAF inquired about this with counsel for Labaton on April 17, 2019 when seeking assent for CCAF's pending motion to substitute: "please advise whether the referral arrangement Labaton discloses for *In re Petrobras Securities Litigation*, No. 14-cv-9662 (S.D.N.Y.) (see Dkt. 536-2 at 8) was noticed to the class in that case pursuant to S.D.N.Y. Local Civil Rule 23.1." Bednarz Decl. Ex. B (email exchange). While counsel for Labaton provided its position to CCAF's

[5] Lead counsel for the *Petrobras* settlement, Pomerantz LLP, advised only that it "has fee-sharing agreements with the firms representing other named plaintiffs in the Action, Labaton Sucharow LLP and Motley Rice LLC, which provide that Class Counsel will compensate these firms from the attorneys' fees that Class Counsel receives in this Action in amounts commensurate with those firms' efforts in this litigation." A Labaton partner filed a declaration in support of the *Petrobras* fee request, but it did not identify any fee sharing agreement. *See Petrobras*, No. 14-cv-9662, Dkt. 789-17 (S.D.N.Y. Apr. 23, 2018), attached as Bednarz Decl. Ex. A.

CCAF is familiar with this settlement because it filed an objection that resulted in a "$46 million reduction in Class Counsel's fee award," which instead benefited the class. *In re Petrobras Sec. Litig.*, 320 F. Supp. 3d 597, 600 (S.D.N.Y. 2018).

pending motion, he seemingly ignored the inquiry about *Petrobras* and did not respond to a direct follow-up email on April 23. *Id.* Upon information and belief, CCAF believes no disclosure of Labaton's referral fee arrangement has been provided to the *Petrobras* court. The existence of such a recent apparent failure to disclose further calls into question the thoroughness of Labaton's internal review and the value of the purported injunctive relief to resolve Labaton's claims.

B. Conclusion

CEI supports CCAF's offer to participate in the upcoming hearing to discuss Class Counsel's fee award and related issues. CCAF would not cross-examine witnesses, but instead make itself available for questions and for presenting counterarguments to rebut Class Counsel. CEI seeks clarification from the Court whether CCAF may do so. If Class Counsel is correct that CCAF is *not* invited to speak at the hearing, it would like to know ahead of time to avoid unnecessary expense.

Respectfully submitted,

Dated: June 7, 2019

/s/ M. Frank Bednarz

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Competitive Enterprise Institute and
Proposed Amicus Curiae
Hamilton Lincoln Law Institute
Center for Class Action Fairness

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

I certify that on June 3, 2019, CCAF emailed counsel for the parties and counsel for the Special Master in a good faith effort to narrow or resolve the issues raised in this motion. All three Class Counsel firm oppose CCAF's participation in the hearing and therefore the objective of the motion (although Lieff and Labaton say they do not oppose clarification from the court *per se*). The remaining plaintiffs firms, defendant, and the Special Master take no position on the motion.

Dated: June 7, 2019

/s/ M. Frank Bednarz
M. Frank Bednarz

CERTIFICATE OF SERVICE

I certify that on June 7, 2019, I served a copy of the forgoing on all counsel of record by filing a copy via the ECF system.

Dated: June 7, 2019

/s/ M. Frank Bednarz
M. Frank Bednarz

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DECLARATION OF M. FRANK BEDNARZ IN SUPPORT OF THE COMPETITIVE ENTERPRISE INSTITUTE'S MOTION ON BEHALF OF THE CENTER FOR CLASS ACTION FAIRNESS, SEEKING CLARIFICATION ON PARTICIPATION AT THE UPCOMING HEARING

DECLARATION OF M. FRANK BEDNARZ

I, Michael Frank Bednarz declare as follows:

1. I have personal knowledge of the facts set forth herein and, if called as witness, could and would testify competently thereto.

2. I am an attorney licensed to practice law in the Commonwealth of Massachusetts and State of Illinois.

3. **Exhibit A,** entitled "Declaration of Thomas A. Dubbs In Support of Class Counsel's Motion For an Award of Attorneys' Fees and Payment of Litigation Expenses Filed on Behalf of Labaton Sucharow LLP," and dated April 18, 2018, is a true and accurate of a filing made *In re Petrobras Securities Litigation*, No. 14-cv-9662, Dkt. 789-17 (S.D.N.Y. Apr. 23, 2018), with attachments C and D removed.

4. **Exhibit B**, entitled "ATRS v State Street" is a true and accurate copy of an email exchange featuring two messages sent by Theodore H. Frank of the Hamilton Lincoln Law Institute and one message sent by Justin J. Wolosz, outside counsel for Labaton Sucharow LLP.

I declare under penalty of perjury under the laws of the United States of America that that the foregoing is true and correct.

Executed on June 7, 2019, in Chicago, Illinois.

s/ M. Frank Bednarz
M. Frank Bednarz

Bednarz Decl.

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PETROBRAS SECURITIES LITIGATION This Document Applies To: *In re Petrobras Securities Litigation*, 14-cv-9662 (JSR)	No. 14-cv-9662 (JSR)

DECLARATION OF THOMAS A. DUBBS IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND PAYMENT OF LITIGATION EXPENSES FILED ON BEHALF OF LABATON SUCHAROW LLP

THOMAS A. DUBBS, declares as follows:

1. I am a senior partner of the law firm of Labaton Sucharow LLP. I submit this declaration in support of Class Counsel's application for an award of attorneys' fees in connection with services rendered in the above-captioned action (the "Action"), as well as for payment of expenses incurred by my Firm in connection with the Action.

2. My Firm represents Class Representative the Employees' Retirement System of the State of Hawaii ("Hawaii"), which was appointed by the Court as a class representative for the Securities Act Class. My Firm seeks attorneys' fees and payment of expenses for the work performed on behalf of the Settlement Class, as well as for services provided to Class Representative Hawaii.

3. Specifically, the work performed by my Firm for the benefit of the Settlement Class includes, among other things: (a) drafting the first filed class action complaint on behalf of an institutional investor; (b) researching and investigating the claims and defenses asserted, particularly those claims and defenses that pertain to the Securities Act Class; (c) participating in

the drafting of the amended class action complaints, including drafting sections related to the Securities Act claims and editing other sections of the amended complaints; (d) drafting significant arguments in opposition to defendants' motions to dismiss, including those arguments with respect to plaintiffs' standing to assert Securities Act claims under Section 14(a); arguments with respect to bond purchasers on the secondary markets who defendants argued were outside of the jurisdiction of the United States securities laws as set forth in *Morrison v. National Australia bank Ltd.*, 561 U.S. 247 (2010); and arguments with respect to Section 11 claims brought against Petrobras' auditor PwC Brazil and the Underwriter Defendants; (e) consulting with experts regarding establishing the domesticity of bond transactions and regarding the scope of the Underwriter Defendants' duty of due diligence in bond offerings; (f) deposing four Underwriter Defendants and a defense expert, defending a deposition of Hawaii, participating in three party depositions, and participating in approximately ten third-party depositions; (g) obtaining and providing document discovery from Hawaii and reviewing and analyzing document productions of Defendants (most of which was in Portuguese); (h) participating in numerous conferences with Class Counsel and other Plaintiffs' counsel with respect to discovery issues and the oppositions to the motions to dismiss; and (g) participating in numerous conferences with Class Counsel and reviewing and editing draft briefs regarding class certification, Defendants' Rule 23(f) appeal and Defendants' subsequent petition for *certiorari*. Additionally, the following services were provided by my Firm with respect to our client, Class Representative Hawaii: communicating and strategizing with Hawaii via telephone, email and in-person meetings concerning the Action; analyzing recoverable damages, especially related to the Securities Act Claims; and advising and obtaining Hawaii's authority on issues related to the settlement of the Action.

4. The schedule annexed hereto as Attachment A is a summary indicating the amount of time spent by the attorneys and professional support staff of my Firm who have been involved in litigating this Action, and the lodestar calculation based on my Firm's hourly rates in the Action. For personnel who are no longer employed by my Firm, the lodestar calculation is based upon the hourly rates for such personnel in his or her final year of employment by my Firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my Firm, which are available at the request of the Court.

5. The hourly rates for the partners, associates, and professional support staff of my Firm included in Attachment A are their current customary rates. The hourly rates for staff attorneys were set in consultation with Class Counsel and are based upon, *inter alia*, each staff attorney's years of legal experience, fluency in Portuguese, and experience in using Portuguese in legal work.

6. The total number of hours expended on this Action by my Firm from inception through February 28, 2018 is 19,532.6. The total lodestar for that work is $10,681,114.50, consisting of $10,181,479.00 in attorneys' time and $499,635.50 in professional support staff time.

7. My Firm's lodestar figures are based upon the Firm's hourly rates in the Action, which rates do not include charges for expense items. Expense items are recorded separately and such charges are not duplicated in my Firm's hourly rates.

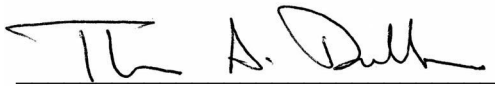
8. As detailed in the schedule annexed hereto as Attachment B, my Firm has incurred a total of $288,926.63 in expenses in connection with the work performed from inception through February 28, 2018.

9. The expenses incurred in this Action are reflected on the books and records of my Firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

10. With respect to the standing of my Firm, annexed hereto as Attachment C is a brief biography of my Firm as well as biographies of my Firm's partners and of counsels.

11. Annexed hereto as Attachment D is a table called, "Attorneys Assigned to the Matter," which provides an overview of the legal experience of the attorneys that appear in Attachment A.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on April 18, 2018.



THOMAS A. DUBBS

Attachment A

ATTACHMENT A

In re Petrobras Securities Litigation
No. 14-cv-9662 (JSR)

LABATON SUCHAROW LLP

TIME REPORT

From inception through February 28, 2018

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Thomas Dubbs	373.7	$995.00	$371,831.50
James Johnson	32.0	$985.00	$31,520.00
Louis Gottlieb	1,170.4	$975.00	$1,141,140.00
Ira Schochet	54.6	$975.00	$53,235.00
Christopher Keller	16.0	$975.00	$15,600.00
Nicole Zeiss	72.5	$900.00	$65,250.00
Eric Belfi	55.6	$900.00	$50,040.00
Michael Stocker	24.1	$900.00	$21,690.00
David Goldsmith	67.3	$875.00	$58,887.50
Thomas Hoffman	32.1	$850.00	$27,285.00
Michael Rogers	9.5	$850.00	$8,075.00
Of Counsel			
Barry Okun	29.0	$800.00	$23,200.00
Rachel Avan	92.0	$700.00	$64,400.00
Associates			
David Erroll	219.1	$675.00	$147,892.50
Elizabeth Wierzbowski	37.5	$675.00	$25,312.50
John Esmay	1,738.2	$600.00	$1,042,920.00
Brett Sherman	43.8	$600.00	$26,280.00
James Ostaszewski	68.9	$575.00	$39,617.50
Roger Yamada	749.1	$500.00	$374,550.00
Ross Kamhi	9.2	$500.00	$4,600.00
Jeffrey Dubbin	93.9	$475.00	$44,602.50
Alec Coquin	31.0	$450.00	$13,950.00
Wendy Tsang	313.8	$400.00	$125,520.00
James Christie	12.1	$400.00	$4,840.00
Jonathan Crevier	113.8	$275.00	$31,295.00
Staff Attorneys			
Maritza Bolano	1,858.2	$625.00	$1,161,375.00

NAME	HOURS	HOURLY RATE	LODESTAR
Gabriela Labouriau	63.2	$625.00	$39,500.00
Barry Kaplan	2,121.1	$550.00	$1,166,605.00
Pablo Echegaray	1,226.1	$550.00	$674,355.00
Lorenzo Merlo	716.7	$550.00	$394,185.00
Sabina Leva	618.5	$550.00	$340,175.00
Vasili Hernandez	1,673.6	$450.00	$753,120.00
Lillian Ortiz	1,022.2	$450.00	$459,990.00
Era Makoci	940.4	$450.00	$423,180.00
Ana Almeida-Halassa	722.4	$450.00	$325,080.00
Adam Jaffee	437.1	$450.00	$196,695.00
Irina Licandro	17.5	$450.00	$7,875.00
Nitoya Munson	1,216.6	$350.00	$425,810.00
Director of Market Intelligence			
William Schervish II	79.7	$550.00	$43,835.00
Research Analysts			
Eunice Ahn	88.2	$325.00	$28,665.00
Chris Capuozzo	34.8	$325.00	$11,310.00
Victoria Tse	19.0	$305.00	$5,795.00
Vivian Motai	6.5	$300.00	$1,950.00
Aaron Gonzalez	5.0	$300.00	$1,500.00
Elaine Rivera	20.0	$275.00	$5,500.00
Investigators			
Jerome Pontrelli	25.0	$495.00	$12,375.00
Paul Wiegartner	77.8	$435.00	$33,843.00
Rian Wroblewski	91.0	$425.00	$38,675.00
Joseph Clark	5.0	$400.00	$2,000.00
Law Clerks			
William Accordino Jr.	41.9	$275.00	$11,522.50
Ralph Labaton	31.0	$275.00	$8,525.00
Marco Duenas	30.0	$275.00	$8,250.00
Anthony Menna	25.8	$275.00	$7,095.00
Marissa Potts	5.5	$250.00	$1,375.00
Paralegals			
Melonie Penrhyn	408.0	$325.00	$132,600.00
Matthew Molloy	117.3	$325.00	$38,122.50
Elaine Chan-Lee	102.8	$325.00	$33,410.00
Peter Schneider	81.8	$325.00	$26,585.00
Shella Mundo	54.0	$325.00	$17,550.00
Cheryl Boria	34.0	$325.00	$11,050.00
Lawrence Mehringer	16.1	$325.00	$5,232.50

NAME	HOURS	HOURLY RATE	LODESTAR
Denise Rogers	15.2	$325.00	$4,940.00
Kristen Gutierrez	10.6	$325.00	$3,445.00
Junnette Alayo	7.3	$325.00	$2,372.50
Stacy Redman	6.5	$325.00	$2,112.50
TOTALS	**19,532.6**		**$10,681,114.50**

Attachment B

ATTACHMENT B

In re Petrobras Securities Litigation
No. 14-cv-9662 (JSR)

LABATON SUCHAROW LLP

EXPENSE REPORT

From inception through February 28, 2018

CATEGORY	AMOUNT
On-Line Legal Research	$ 32,621.53
On-Line Factual Research	$ 4,204.81
Litigation Support	$ 88,685.85
Long-Distance Telephone/Conference Calling	$ 757.20
Postage & Express Mail	$ 500.22
Internal Duplicating	$ 34,954.80
Outside Duplicating	$ 2,387.82
Out of Town Travel	$ 15,666.76
Local Work-Related Transportation	$ 6,926.50
Local Work-Related Meals	$ 1,971.14
Consulting Experts	$ 99,847.52
Court Reporter/Transcript Fees	$ 402.48
TOTAL EXPENSES:	**$ 288,926.63**

Bednarz Decl.

EXHIBIT B

Gmail by Google

Frank Bednarz <frank.bednarz@hlli.org>

ATRS v State Street

Ted Frank <tfrank@gmail.com> Tue, Apr 23, 2019 at 4:51 PM
To: Frank Bednarz <frank.bednarz@hlli.org>, "Wolosz, Justin J." <jwolosz@choate.com>

Justin: please confirm that you've asked your client to look into the referral fee disclosure in *Petrobras* and let me know what they find.

On Fri, Apr 19, 2019 at 11:20 AM Wolosz, Justin J. <jwolosz@choate.com> wrote:

> Same for Labaton as well.
>
> Justin J. Wolosz
>
> CHOATE
>
> Choate, Hall & Stewart LLP
>
> Two International Place
>
> Boston, MA 02110
>
> t 617.248.5221
>
> f 617.502.5221
>
> jwolosz@choate.com
>
> www.choate.com
>
> ---
>
> **From:** Laura Gerber [mailto:lgerber@KellerRohrback.com]
> **Sent:** Thursday, April 18, 2019 12:41 PM
> **To:** Heimann, Richard M.; 'Kelly, Brian'; Ted Frank; Gary Peeples; Lukey, Joan; David Copley; Chiplock, Daniel P.; Robert L. Lieff; Fineman, Steven E.; Wolosz, Justin J.; Glass, Stuart M.; Sharp, Joshua; bmctigue@mctiguelaw.com; jmoore@mctiguelaw.com; cmc@fczlaw.com; rjb@fczlaw.com; Lynn Sarko; ckravitz@zuckerman.com; msmith@zuckerman.com; Paine, William; Halston, Daniel; emcevoy@barrettsingal.com; wsinnott@barrettsingal.com
> **Cc:** Frank Bednarz; ted.frank@hlli.org
> **Subject:** RE: ATRS v State Street
>
> ****External Email****
>
> ---
>
> Keller Rohrback takes the same position as the Thornton Law Firm.
>
> Thank you,

Laura Gerber

From: Heimann, Richard M. <RHEIMANN@lchb.com>
Sent: Thursday, April 18, 2019 8:15 AM
To: 'Kelly, Brian' <bkelly@nixonpeabody.com>; Ted Frank <tfrank@gmail.com>; Gary Peeples <gpeeples@bpjlaw.com>; Lukey, Joan <joan.lukey@choate.com>; Chiplock, Daniel P. <DCHIPLOCK@lchb.com>; Robert L. Lieff <rlieff@lchb.com>; Fineman, Steven E. <sfineman@lchb.com>; Wolosz, Justin J. <jwolosz@choate.com>; Glass, Stuart M. <sglass@choate.com>; Sharp, Joshua <jsharp@nixonpeabody.com>; bmctigue@mctiguelaw.com; jmoore@mctiguelaw.com; cmc@fczlaw.com; rjb@fczlaw.com; Laura Gerber <lgerber@KellerRohrback.com>; Lynn Sarko <lsarko@kellerrohrback.com>; ckravitz@zuckerman.com; msmith@zuckerman.com; Paine, William <William.Paine@wilmerhale.com>; Halston, Daniel <Daniel.Halston@wilmerhale.com>; emcevoy@barrettsingal.com; wsinnott@barrettsingal.com
Cc: Frank Bednarz <frank.bednarz@hlli.org>; ted.frank@hlli.org
Subject: RE: ATRS v State Street

Same for LCHB

Lieff Cabraser Heimann & Bernstein
Attorneys at Law

Richard M. Heimann
rheimann@lchb.com
t 415.956.1000
f 415.956.1008

Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
www.lieffcabraser.com

From: Kelly, Brian [mailto:bkelly@nixonpeabody.com]
Sent: Thursday, April 18, 2019 7:16 AM
To: Ted Frank; Gary Peeples; Lukey, Joan; Heimann, Richard M.; Chiplock, Daniel P.; Lieff, Robert L.; Fineman, Steven E.; Wolosz, Justin J.; Glass, Stuart M.; Sharp, Joshua; bmctigue@mctiguelaw.com; jmoore@mctiguelaw.com; cmc@fczlaw.com; rjb@fczlaw.com; lgerber@kellerrohrback.com; lsarko@kellerrohrback.com; ckravitz@zuckerman.com; msmith@zuckerman.com; Paine, William; Halston, Daniel; emcevoy@barrettsingal.com; wsinnott@barrettsingal.com
Cc: Frank Bednarz; ted.frank@hlli.org
Subject: RE: ATRS v State Street

Hi Ted,

On behalf of TLF, we do not consent to CEI's/ CCAF's/ HLLI's participation in the proceedings, but we do not oppose you substituting HLLI for CEI as a technical matter for purposes of the docket. We reserve the right to object to the participation of any of these entities in the proceedings.

Regards,

Brian

Brian T Kelly
Partner
bkelly@nixonpeabody.com
T 617-345-1065 | C 617-880-9918 | F 855-714-9513
Nixon Peabody LLP | Exchange Place | 53 State Street | Boston, MA 02109-2835
nixonpeabody.com | @NixonPeabodyLLP

The NP Boston office *has moved!* We are now located at **Exchange Place – 53 State Street.**

From: Ted Frank <tfrank@gmail.com>
Sent: Wednesday, April 17, 2019 1:14 PM
To: Gary Peeples <gpeeples@bpjlaw.com>; Lukey, Joan <joan.lukey@choate.com>; rheimann@lchb.com; dchiplock@lchb.com; rlieff@lchb.com; sfineman@lchb.com; Wolosz, Justin J. <jwolosz@choate.com>; Glass, Stuart M. <sglass@choate.com>; Kelly, Brian <bkelly@nixonpeabody.com>; Sharp, Joshua <jsharp@nixonpeabody.com>; bmctigue@mctiguelaw.com; jmoore@mctiguelaw.com; cmc@fczlaw.com; rjb@fczlaw.com; lgerber@kellerrohrback.com; lsarko@kellerrohrback.com; ckravitz@zuckerman.com; msmith@zuckerman.com; Paine, William <William.Paine@wilmerhale.com>; Halston, Daniel <Daniel.Halston@wilmerhale.com>; emcevoy@barrettsingal.com; wsinnott@barrettsingal.com
Cc: Frank Bednarz <frank.bednarz@hlli.org>; ted.frank@hlli.org
Subject: ATRS v State Street

[EXTERNAL E-MAIL]

Counsel,

The Center for Class Action Fairness (CCAF) moved to the Hamilton Lincoln Law Institute (HLLI) on January 31. Please advise whether you oppose a motion to substitute HLLI for the Competitive Enterprise Institute (CEI), or alternatively to withdraw CEI and allow HLLI to participate as *amicus* in its stead going forward.

CEI consents to the substitution. I understand that the plaintiffs' firms have standing objections to CCAF participating at all and we note that in the motion, but one hopes the parties can assent to the substitution of parties to reflect the successorship of CCAF without unnecessary litigation over a collateral issue.

Separately, counsel for Labaton: please advise whether the referral arrangement Labaton discloses for *In re Petrobras Securities Litigation*, No. 14-cv-9662 (S.D.N.Y.) (see Dkt. 536-2 at 8) was noticed to the class in that case pursuant to S.D.N.Y. Local Civil Rule 23.1. As you know, I represent a class member to that settlement.

Regards,

Ted Frank