

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ARKANSAS TEACHER RETIREMENT SYSTEM,)	
on behalf of itself and all others similarly situated,)	No. 11-cv-10230 MLW
)	
Plaintiffs,)	
)	
v.)	
)	
STATE STREET BANK AND TRUST COMPANY,)	
)	
Defendant.)	

ARNOLD HENRIQUEZ, MICHAEL T. COHN,)	
WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND,)	No. 11-cv-12049 MLW
and those similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
STATE STREET BANK AND TRUST COMPANY,)	
STATE STREET GLOBAL MARKETS, LLC and)	
DOES 1-20,)	
)	
Defendants.)	

THE ANDOVER COMPANIES EMPLOYEE SAVINGS)	
AND PROFIT SHARING PLAN, on behalf of itself, and)	No. 12-cv-11698 MLW
JAMES PEHOUSHEK-STANGELAND, and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
STATE STREET BANK AND TRUST COMPANY,)	
)	
Defendant.)	

**RESPONSE BY LIEFF CABRASER HEIMANN & BERNSTEIN, LLP TO THE
COURT’S APRIL 13, 2020 ORDER [ECF NO. 601]**

Lieff Cabraser Heimann & Bernstein, LLP (“Lieff Cabraser”) respectfully submits this response to the Court’s April 13, 2020 Order [ECF No. 601] (the “April 13 Order”) in order to clarify its position with respect to (a) the Court’s February 27, 2020 Order (the “Feb. 27 Order”) and (b) the Special Master’s Report, submitted on April 7, 2020 [ECF No. 599] (the “Report”) in response thereto:

1. To be clear, Lieff Cabraser has not sought, and is not seeking, a stay of an operational order. The Court’s Feb. 27 Order by its explicit terms did not specify the timing or logistics concerning payment by or reallocation of funds among any interested party or the class. Instead, the Feb. 27 Order specifically resubmitted this matter back to the Special Master to recommend “further action” concerning “implementation” of the Feb. 27 Order, after meeting and conferring with all counsel on the subjects of (a) whether further “notice to the class is now legally required or appropriate,” and (b) “the logistics concerning the recovery and reallocation of funds previously awarded that is required by the [Feb. 27 Order].” Feb. 27 Order at 155. The Feb. 27 Order directed the Master to “report” on these issues and “any others” relating to the implementation of the Feb. 27 Order. *Id.* at 156.

2. The Master filed his Report, as directed, on April 7. ECF No. 599. Among other things, the Master recommended to this Court that Customer Class Counsel (including Lieff Cabraser) pay the full amounts ordered by the Court in its Feb. 27 Order “into an escrow account managed by a third-party funds manager” for “redistribution to the class and ERISA counsel consistent with the Court’s Order over the next approximately nine months.” Report at 4. The Master recommended, specifically, that the first such payments into escrow be made by Class Counsel by August 15, 2020, with the second round of payments due by January 15, 2021. *Id.* at 4-5. The Master then recommended that payments to the class and ERISA Counsel be made out

of that escrow account within 30 days of each of the two rounds of payments into escrow by Customer Class Counsel. *Id.*

3. The Master recommended that Lief Cabraser pay the \$1,139,457 directed by the Feb. 27 Order into escrow in accordance with the Master's proposed 9-month schedule and—most relevant to the issue at hand—that payment of such amount be made to the class and ERISA Counsel *regardless* of whether Lief Cabraser's appeal has been adjudicated. *Id.* at 5, 12-13. The Master further recommended that Lief Cabraser be permitted to “petition the Court to order that the other Customer Class counsel compensate Lief Cabraser for any overpayment” occasioned by the First Circuit's modification of any obligation owed by Lief Cabraser. *Id.* at 5.

4. Importantly, for present purposes, Lief Cabraser has not objected to paying the amount directed by the Feb. 27 Order into escrow in accordance with the Master's proposed schedule. *See* Response and Objections by Lief Cabraser Heimann & Bernstein, LLP to the Special Master's Report in Response to the Court's Feb. 27 Order [ECF No. 600] (“Response and Objections”) at 4.¹ Rather, Lief Cabraser's objections are, *inter alia*, to the Master's recommendations that (a) any funds that could be affected by the First Circuit's decision on Lief Cabraser's appeal be paid out to the class and ERISA Counsel regardless of whether that appeal has been adjudicated and (b) any reduction by the First Circuit in Lief Cabraser's obligation be necessarily reimbursed to Lief Cabraser by other Customer Class Counsel. As this Court is aware, a notice of appeal has been filed and there is currently pending an appeal before the First Circuit.

¹ Lief Cabraser suggested that one way to cure its objection to the Master's recommendation would be to defer any payment by Lief Cabraser pending the outcome of its appeal, but alternatively suggested that any payments by it simply be held in escrow and not disseminated to the class or ERISA Counsel pending the outcome of its appeal. *Id.*

5. As indicated in the Response and Objections, the proper and economical way to avoid possible conflict with any future First Circuit mandate would be simply to hold any funds paid by Lieff Cabraser in accordance with the Master's proposed schedule in escrow pending the outcome of Lieff Cabraser's appeal. The class, consisting overwhelmingly (if not entirely) of a finite number of sophisticated institutions, may readily be paid any funds owed to it out of escrowed funds in the future (if necessary).

Having made its position known, Lieff Cabraser has not sought and is not seeking the stay of any operational order. The Feb. 27 Order by its terms specifically tasked the Master with conferring with the parties and reporting back to the Court as to, *inter alia*, the Master's proposals regarding payments by Customer Class Counsel to the class and to ERISA Counsel. The Master has done so. Lieff Cabraser has timely submitted its objections to the Master's recommendations. Only this Court can issue an order on these matters. Lieff Cabraser therefore rests on its previously submitted Response and Objections to the Master's Report.

Dated: April 15, 2020

Respectfully submitted,

Lieff Cabraser Heimann & Bernstein, LLP

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CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically on April 15, 2020 and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing (“NEF”).

/s/ Richard M. Heimann

Richard M. Heimann