

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

Plaintiff,

No. 11-cv-10230-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

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

Plaintiffs,

No. 11-cv-12049-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

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

Plaintiffs,

No. 12-cv-11698-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

**SPECIAL MASTER'S MOTION FOR LEAVE TO FILE
MOTION IN RESPONSE TO COURT'S SEPTEMBER 22, 2020 HEARING**

The Special Master respectfully moves for leave to file his Motion in Response to the Court's September 22, 2020 Hearing, attached hereto as Tab A, as well as one exhibit attached to the Motion, a Revised Payment Plan.

As grounds for requesting leave, the Special Master's Motion is required to clarify his position with respect to the payment of funds to the Class and to correct ambiguities in his Revised Payment Plan and to address concerns raised by the Court at the hearing.

WHEREFORE, the Special Master respectfully requests that the Court grant his motion for leave to file.

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

Pursuant to Local Rule 7.1, the Special Master's counsel contacted other counsel in this case in order to confer regarding the substance of this motion. All parties except Thornton Law Firm responded; no responding party objected to the filing of this motion. Counsel for Liefv Cabraser replied: "No objection to filing, of course we do object to the substance, ie that Liefv's payments be distributed to the class prior to resolution of the appeal by the circuit court." Counsel for Labaton, Keller Rohrback, McTigue Law, Zuckerman Spaeder, the Hamilton Lincoln Law Institute's Center for Class Action Fairness (CCAF) and State Street have no objection on the motion for leave to file.

Dated: September 24, 2020

Respectfully submitted,

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

By his attorneys,

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

I hereby certify that this Notice of Appearance was filed electronically on September 24, 2020 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

Tab A

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**SPECIAL MASTER'S MOTION IN RESPONSE TO THE
COURT'S SEPTEMBER 22, 2020 HEARING**

On September 14, 2020, the Court issued an order confirming that the scheduled hearing to consider any objections to the February 27, 2020 Order would be held on September 22, 2020. The Order further directed the Special Master to, among other things, identify any issues to be addressed at the September 22 hearing and provide his views. The Special Master's Response, filed on September 17, 2020, identified two issues that the Special Master submitted as requiring the Court's attention at the September 22 hearing: approval of the Special Master's Proposed Revised Payment Plan (amending the July 7, 2020 Proposed Payment Plan approved by the Court [Dkt. No. 619]) and entrance of a final order. Attached as Exhibit A to the Response was a Proposed Revised Payment Plan.

In his Response, the Special Master recommended that "Lieff Cabraser will be obligated to pay its share of the reallocated funds to the class and to ERISA Counsel, commensurate with the obligations imposed on the other Customer Class Counsel." The Proposed Revised Payment Plan modified the July 7 Plan in one material way – to delete that plan's provisions that addressed the potential consequences and logistical challenges presented by Lieff Cabraser's then-pending appeal. Specifically, as directed by the Court, the July 7 Payment Plan provided that \$1,139,457.00 be repaid by Lieff Cabraser and held in escrow during the anticipated First Supplemental Distributions in light of the then-pending appeal and required that, had the appeal not been resolved, the parties should consult with the Court forty-five days prior to the scheduled Second Supplemental Distribution as to whether it should distribute or handle those funds moving forward. After the First Circuit dismissed Lieff Cabraser's appeal on September 3, 2020 on the grounds that the Court's February 27 Order was not an appealable order, the Special Master removed those particular provisions and, as addressed in the Response, recommended that funds remitted by Lieff Cabraser be distributed alongside the other Customer Class funds in

accordance with the First and Second Supplemental distributions to the Class and ERISA Counsel.

On September 22, 2020, the Court held a hearing to discuss various issues arising from its February 27, 2020 Order, including the proposed implementation of that Order through a Proposed Revised Payment Plan submitted by the Special Master.

During the hearing, the Court accurately identified that the Proposed Revised Payment Plan did not adequately implement the recommendations made by the Special Master in the Response as it relates to his recommendation that funds paid by Lieff Cabraser be timely distributed to the class and ERISA counsel and not held back given that no appeal remains pending. The noted discrepancy appeared in the total distribution amounts recorded in the Proposed Revised Payment Plan. Although the Proposed Revised Payment Plan had deleted the previous requirement for a conference forty-five (45) days before the Second Supplemental Distribution, it did not accurately account for the direct inclusion of the \$1,139,457.00 of Lieff Cabraser repayment in the total amount of the funds transferred from the escrow account as distributions to the Class.¹

As the Special Master's counsel clarified in her colloquy with the Court at the September 22 hearing, the Special Master's position was accurately reflected in the Special Master's Response—that the funds Lieff Cabraser repays into the escrow account should be distributed to the Class at the same time as funds submitted by the other Customer Class Counsel, Thornton Law Firm and Labaton Sucharow.² For the sake of clarity and to correct this ambiguity, the

¹ The amount of \$2,830,787.84 directed to ERISA Counsel in the Proposed Revised Payment Plan, through the First and Second Supplement Distributions, is accurate.

² During the September 22 hearing, the Special Master's counsel also confirmed the Special Master's position that should Lieff Cabraser succeed in its appeal, the funds should not automatically be repaid by the Class. This position was initially presented in the Special Master's September 17, 2020 Response, stating "[s]hould Lieff Cabraser file a future appeal, it will nevertheless make its payments, and, if successful, can petition the Court for relief."

Special Master hereby submits the attached corrected Proposed Revised Payment Plan, attached as Exhibit A to this motion. The corrected Proposed Revised Payment Plan proposes that the Class receive \$7,192,413.59 during the First Supplemental Distribution and \$7,192,413.57 during the Second Supplemental Distribution, augmented by the distribution of the two \$569,728.50 Lieff Cabraser payments that the Special Master now recommends be included in the First and Second Supplemental Distributions to the Class on the provided-for dates and at the same time the funds remitted by the other Customer Class counsel are distributed.

The Special Master hereby respectfully requests that the Court accept the corrected Revised Payment Plan to replace the Revised Payment Plan previously submitted with the Special Master's Response.

Dated: September 24, 2020

Respectfully submitted,

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

By his attorneys,

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

Exhibit A

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REVISED PAYMENT PLAN

Date	Purpose/recipient	Total amount paid	Payment by Labaton	Payment by Lieff Cabraser	Payment by Thornton	Funds paid to the Class
9/1/20	Lead Counsel to file motion for authorization to conduct First Distribution to ERISA and Public & Other Class members; deadline by which Final Distribution to Registered Investment Companies (RICs) shall be conducted	\$128.75 million				All
1/4/21	First Customer Class Counsel payment into escrow	\$8,607,807.51	\$4,793,742.18	\$569,728.50	\$3,244,336.83	
1/15/21	First Supplemental Distribution to Class and ERISA counsel					\$7,192,413.59 to Class \$1,415,393.92 to ERISA Counsel
3/30/21	Second Customer Class Counsel payment into escrow	\$8,607,807.49	\$4,793,742.17	\$569,728.50	\$3,244,336.82	
4/30/21	Second Supplemental Distribution to Class and ERISA counsel					\$7,192,413.57 to Class \$1,415,393.92 to ERISA Counsel