

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, )  
Defendants. )

C.A. No. 11-10230-MLW

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

v. )

STATE STREET BANK AND TRUST COMPANY, )  
Defendants. )

C.A. No. 11-12049-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, )  
Defendants. )

C.A. No. 12-11698-MLW

MEMORANDUM AND ORDER

WOLF, D.J.

April 11, 2017

On April 3, 2017, Labaton Sucharow LLP filed an Emergency Motion for Stay of March 31, 2017 Memorandum and Order and for Limited Reconsideration Regarding Supplemental Notice to the Class

(the "Motion"). On April 5, 2017, the court stayed the March 31, 2017 Order until it ruled on the merits of the request for amendments to the Notice of Proceedings prepared by the court for distribution to members of the class in this case. See Docket No. 197.

It is now hereby ORDERED that:

1. The Motion (Docket No. 195) is ALLOWED in part and DENIED in part.

2. The revised Notice of Proceedings attached hereto as Exhibit A shall be distributed to class members and/or their counsel in the time and manner stated in paragraph 3 of the March 31, 2017 Memorandum and Order (Docket No. 192).<sup>1</sup>

3. Paragraph 4 of the March 31, 2017 Memorandum and Order is CLARIFIED to provide that the plaintiffs' counsel need not make available on the designated websites responses to requests for discovery or communications with the Special Master, or any individual or organization engaged to assist him, which are not motions, responses, objections to orders, or other filings for entry on the docket of this case. See Anderson v. Cryovac, Inc., 805 F. 2d 1, 11-13 (1st Cir. 1986); March 8, 2017 Memorandum and Order (Docket No. 173), ¶¶8-11.

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<sup>1</sup> A version of Exhibit A showing the amendments to the Notice made by the court in response to the Motion is attached hereto as Exhibit B.

*Charles P. Sweeney*  
UNITED STATES DISTRICT JUDGE

**Exhibit A**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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ARKANSAS TEACHER RETIREMENT SYSTEM, et al. v. STATE STREET BANK AND TRUST COMPANY	)	No. 11-cv-10230 MLW
	)	
	)	
ARNOLD HENRIQUEZ, et al. v. STATE STREET BANK AND TRUST COMPANY, et al.	)	No. 11-cv-12049 MLW
	)	
	)	
THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, et al. v. STATE STREET BANK AND TRUST COMPANY	)	No. 12-cv-11698 MLW
	)	
	)	

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**NOTICE OF PROCEEDINGS THAT COULD RESULT IN AN ADDITIONAL  
AWARD TO CLASS MEMBERS WHO HAVE CLAIMS**

This notice is being sent to you as a member of the class in the above-captioned cases to inform you of proceedings that could result in an increase in the amount of money to be distributed to class members. This notice explains how you can access documents filed in these proceedings, how you can communicate with counsel for class members, and how you can communicate with counsel for the Special Master who has been appointed by Senior United States District Judge Mark L. Wolf (the "court") to investigate and report on the issues that have arisen since the court approved the settlement agreement in this class action on November 2, 2016. As explained below, class members will be provided notice and an opportunity to be heard concerning the Special Master's report and recommendation regarding, among other things, whether the more than \$75,000,000 in attorneys' fees, expenses, and payments to class representatives awarded by the court should be reduced and redistributed to class members.

After a hearing on November 2, 2016, the court approved a \$300,000,000 settlement in this class action in which it was alleged that defendant State Street Bank and

Trust overcharged its customers in connection with certain foreign exchange transactions. The court also awarded the attorneys for the class ("Class Counsel") more than \$75,000,000 in attorneys' fees and expenses. In addition, the court made awards of \$10,000 or \$25,000 to each of the seven class representatives. The court evaluated the reasonableness of the more than \$75,000,000 award to Class Counsel by comparing it to what they represented to be the reasonable number of hours the attorneys worked multiplied by what Class Counsel represented to be the actual customary and reasonable hourly billing rate for each attorney. Class Counsel stated that: this figure, or "lodestar," was in excess of \$41,000,000; that more than \$75,000,000, therefore, was 1.8 times this "lodestar;" and that a 1.8 "multiplier" was reasonable in view of the risks they took in representing the class in this case.

On November 10, 2016, Lead Counsel for the class, Labaton Sucharow LLP ("Labaton"), filed a letter informing the court that, as a result of a media inquiry, Labaton, The Thornton Law Firm LLP ("Thornton"), and Lief, Cabraser, Heimann & Bernstein, LLP ("Lief") discovered that they had inadvertently inflated the number of hours worked on this case by more than 9,300, inflating the "lodestar" the court had relied upon by more than \$4,000,000. Labaton stated that the award of attorneys' fees and expenses of more than \$75,000,000, representing a "multiplier" of 2.0 of the "lodestar," nevertheless remained reasonable and should not be reduced.

On December 17, 2016, The Boston Globe published an article that, among other things, raised questions concerning the accuracy of the representations that certain attorneys working for Labaton, Thornton, and Lief had customary and reasonable hourly billing rates of \$350 to \$450 an hour, or whether the actual or reasonable hourly rates for

their services was much lower. In addition, the article raised questions concerning whether the hours reportedly worked by attorneys employed by Labaton, Thornton, and Lieff were actually all worked.

After providing the parties notice and conducting a hearing on March 6, 2017, the court appointed Retired Senior United States District Judge Gerald Rosen as a Special Master to investigate and submit a report and recommendation addressing, at least: (a) the accuracy and reliability of the representations made in the requests for awards of attorneys' fees, expenses, and payments to the class representatives for their services; (b) the reasonableness of those awards and whether they should be reduced; and (c) whether any misconduct occurred in connection with seeking those awards.

The cost of the Special Master, and those employed to assist him, will be paid from the fees previously awarded to some or all of the Class Counsel. As ordered by the court, Labaton has returned to the District Court \$2,000,000, from the portion of the award distributed to Labaton, Thornton, and Lieff, for this purpose and may be ordered to return more.

The proceedings concerning the re-opened issues of the amount of reasonable attorneys' fees, expenses, and awards to class representatives will not delay or diminish the initial distributions to class members from the settlement fund. Class Counsel assert that the representations made in their requests were reliable and the awards made were reasonable. Therefore, they oppose any reduction of the awards of more than \$75,000,000 in attorneys' fees, expenses, and payments to the class representatives previously ordered. However, if, after the Special Master issues his report and recommendation, any or all of those awards are reduced, an additional distribution may be made to class members.

The Special Master has been directed to attempt to submit his report and recommendation to the court by October 10, 2017. Class members will be provided notice of the report and recommendation, and an opportunity to be heard on whether the court should adopt the Special Master's recommendations.

All orders and substantive submissions to the Special Master, and all judicial filings concerning these proceedings, will be made part of the District Court record in these cases. They will also be available to class members on the class website, [www.statestreetindirectfxclasssettlement.com](http://www.statestreetindirectfxclasssettlement.com), and at [www.labaton.com](http://www.labaton.com).

Class members may contact Labaton, as Lead Counsel for the class, by calling (888) 219-6877 or emailing [settlementquestions@labaton.com](mailto:settlementquestions@labaton.com). Class members may contact counsel to the Special Master, William Sinnott, Esq., by calling (617) 720-5090 or emailing [wsinnott@dbslawfirm.com](mailto:wsinnott@dbslawfirm.com).

PLEASE DO NOT CONTACT THE COURT OR DEFENDANTS REGARDING THIS NOTICE.

Dated: March 31, 2017

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UNITED STATES DISTRICT JUDGE



**Exhibit B**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, et al. v. STATE STREET BANK AND TRUST COMPANY	)	No. 11-cv-10230 MLW
	)	
ARNOLD HENRIQUEZ, et al. v. STATE STREET BANK AND TRUST COMPANY, et al.	)	No. 11-cv-12049 MLW
	)	
THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, et al. v. STATE STREET BANK AND TRUST COMPANY	)	No. 12-cv-11698 MLW
	)	
	)	

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On December 17, 2016, The Boston Globe published an article ~~reporting that,~~ among other things, raised questions concerning the accuracy of the representations that ~~some certain~~ attorneys working for Labaton, Thornton, and Lief~~;~~ ~~who were represented to have regular billing rates of \$350 to \$450 an hour were paid only \$25 to \$40 per hour~~had

customary and reasonable hourly billing rates of \$350 to \$450 an hour, or whether the actual or reasonable hourly rates for their services was much lower. In addition, the article raised questions concerning whether the hours reportedly worked by attorneys employed by Labaton, Thornton, and Lieff were actually all worked.

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Dated: March 31, 2017

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UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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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, )  
Defendants. )

---

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. )

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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, )  
Defendants. )

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**DECLARATION OF ERIC J. MILLER ON BEHALF OF A.B. DATA, LTD.  
REGARDING MAILING AND EMAILING OF SUPPLEMENTAL NOTICE TO  
SETTLEMENT CLASS MEMBERS AND/OR THEIR COUNSEL**

I, Eric J. Miller, declare as follows, pursuant to 28 U.S.C. §1746:

1. I am a Vice President of A.B. Data, Ltd.’s Class Action Administration Division (“A.B. Data”), whose Corporate Office is located in Milwaukee, Wisconsin. Pursuant to the Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, entered on August 11, 2016 (the “Preliminary Approval Order”),<sup>1</sup> A.B. Data was authorized to act as the Claims Administrator in connection with the Settlement in the above-captioned actions. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. I submit this Supplemental Declaration pursuant to the Court’s Memorandum and Order entered on March 31, 2017 directing that a supplemental notice (the “Supplemental Notice”) be sent by mail and email to Settlement Class Members and/or their counsel.

3. In accordance with the Memorandum and Order, on April 18, 2017, A.B. Data caused the Supplemental Notice to be sent by U.S. mail, postage prepaid, to 1,945 Settlement Class Members and/or their counsel, using the mailing list created in connection with mailing the original settlement notice, as updated during the administration of the Settlement. *See* Exhibit A, attached hereto.

4. Also in accordance with the Memorandum and Order, on April 18, 2017, A.B. Data caused the Supplemental Notice to be emailed to 115 Settlement Class Members and/or their counsel for whom Plaintiffs’ Counsel or the Claims Administrator had an email address. *See* Exhibit B, attached hereto.

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<sup>1</sup> All capitalized terms used herein that are not defined have the same meaning as that provided in the Stipulation and Agreement of Settlement, dated July 26, 2016.

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

Executed this 24<sup>th</sup> day of April, 2017.

A handwritten signature in black ink, appearing to read "Eric J. Miller", written over a horizontal line.

Eric J. Miller



# EXHIBIT A

**Notice ID:**

**NOTICE TO CUSTOMERS OF STATE STREET BANK AND TRUST COMPANY (“SSBT”)  
*State Street Indirect FX Trading Class Action,*  
Case No. 11-cv-10230 MLW (D. Mass.)**

You have been identified by SSBT as, or as representing, the entity (entities) listed below, which may be a member of the class in this class action.

If you have any questions, you may contact the Claims Administrator at 877-240-3540, or by email at [info@StateStreetIndirectFXClassSettlement.com](mailto:info@StateStreetIndirectFXClassSettlement.com). Thank you for your cooperation.

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

<i>ARKANSAS TEACHER RETIREMENT SYSTEM, et al.</i> <i>v. STATE STREET BANK AND TRUST COMPANY</i>	)	No. 11-cv-10230 MLW
<i>ARNOLD HENRIQUEZ, et al. v. STATE STREET BANK AND TRUST COMPANY, et al.</i>	)	No. 11-cv-12049 MLW
<i>THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, et al. v. STATE STREET BANK AND TRUST COMPANY</i>	)	No. 12-cv-11698 MLW

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PLEASE DO NOT CONTACT THE COURT OR DEFENDANTS REGARDING THIS NOTICE.

Dated: April 11, 2017

*/s/ Mark L. Wolf*  
UNITED STATES DISTRICT JUDGE

# EXHIBIT B

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**From:** [info@StateStreetIndirectFXClassSettlement.com](mailto:info@StateStreetIndirectFXClassSettlement.com) [<mailto:info@StateStreetIndirectFXClassSettlement.com>]

**Sent:** Tuesday, April 18, 2017 3:01 PM

**To:** |

**Subject:** SUPPLEMENTAL NOTICE REGARDING STATE STREET INDIRECT FX TRADING CLASS ACTION

Below is a court-ordered supplemental notice that contains information about additional court proceedings. A copy of this notice is also being mailed to you.

A.B. Data, Ltd.  
Claims Administrator  
877-240-3540

**UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS**

*ARKANSAS TEACHER RETIREMENT SYSTEM, et al.*  
*v. STATE STREET BANK AND TRUST COMPANY*

No. 11-cv-10230 MLW

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*BANK AND TRUST COMPANY, et al.*

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*STREET BANK AND TRUST COMPANY*

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Class members may contact Labaton, as Lead Counsel for the class, by calling (888) 219-6877 or emailing [settlementquestions@labaton.com](mailto:settlementquestions@labaton.com). Class members may contact counsel to the Special Master, William Sinnott, Esq., by calling (617) 720-5090 or emailing [wsinnott@dbslawfirm.com](mailto:wsinnott@dbslawfirm.com).

PLEASE DO NOT CONTACT THE COURT OR DEFENDANTS REGARDING THIS NOTICE.

Dated: April 11, 2017

*/s/ Mark L. Wolf*  
UNITED STATES DISTRICT JUDGE

Please click [here](#) to unsubscribe



**Certificate of Service**

I certify that on April 25, 2017, I caused the foregoing Declaration of Eric J. Miller on Behalf of A.B. Data, LTD. Regarding Mailing and EMailing of Supplemental Notice to Settlement Class Members and/Or Their Counsel to be filed through the ECF system in the above-captioned actions, and accordingly to be served electronically upon all registered participants identified on the Notices of Electronic Filing.

/s/ David J. Goldsmith  
David J. Goldsmith

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.

April 26, 2017

The court has reviewed the Declaration of Eric J. Miller on  
Behalf of A.B. Data Ltd. Regarding Mailing and Emailing of  
Supplemental Notice to Settlement Class Members and/or Their

Counsel, which was filed in response to the March 31, 2017 and April 11, 2017 Orders. Mr. Miller reports that "A.B. Data caused the Supplemental Notice to be emailed to 115 Settlement Class Members and/or their counsel for whom Plaintiffs' Counsel or the Claims Administrator had an email address." Docket No. 202, ¶4. The court notes that on March 29, 2017, Labaton Sucharow LLP, as Lead Counsel for Plaintiffs, opposed providing supplemental notice by email stating, in part, that "the Firm does not have email addresses for class members." Docket No. 190 at 4. It now appears that this representation was not accurate.

In view of the foregoing, it is hereby ORDERED that Labaton Sucharow LLP shall, by May 4, 2017, file one or more affidavits addressing: how, when, and by whom the email addresses were obtained; and why the representation that "the Firm [did] not have email addresses for class members" was not false or misleading.

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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

v. )

) C.A. No. 11-10230-MLW

STATE STREET BANK AND TRUST COMPANY, )  
Defendants. )

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

v. )

) C.A. No. 11-12049-MLW

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 )

v. )

) C.A. No. 12-11698-MLW

STATE STREET BANK AND TRUST COMPANY, )  
Defendants. )

MEMORANDUM AND ORDER

WOLF, D.J.

May 2, 2017

I. SUMMARY

On March 8, 2017, pursuant to Federal Rule of Civil Procedure 53, the court appointed Retired United States District Judge Gerald

Rosen as a Special Master. See Docket No. 173. The Special Master was directed to investigate, among other things, the accuracy and reliability of the representations made by counsel for the class in this case ("Plaintiffs' Counsel") in their successful request for an award of more than \$75,000,000 in attorneys' fees and expenses, the reasonableness of that award in view of information and issues that have emerged since it was made by the court in November 2016, and whether the award should be reduced. Id., ¶2. The Special Master was ordered to proceed with all reasonable diligence and to submit, by October 10, 2017 if possible, a report and recommendation to the court. Id., §3. The court authorized the Special Master to retain other individuals and organizations to assist him. Id., ¶1.

The Special Master retained William Sinnott, Esq. as his counsel. After the Special Master spoke and corresponded with the attorney for Plaintiffs' Counsel, Mr. Sinnott engaged John Toothman, Esq. to assist the Special Master and him in the performance of their duties because of Mr. Toothman's experience in matters concerning the reasonableness of attorneys' fees in class actions and other cases. Three of the eight firms that represent class members -- Labaton Sucharow LLP ("Labaton"), Thornton Law Firm LLP ("Thornton"), and Lief Cabraser Heiman & Bernstein LLP ("Lief") (collectively "Objecting Counsel") -- objected to the retention of Mr. Toothman. See Docket No. 194.

The Special Master denied their objection. See Docket No. 193. Objecting Counsel have appealed that decision to the court. See Docket No. 199.

For the reasons explained in this Memorandum, the court finds that the Special Master did not make an error of fact or law in allowing his counsel to retain Mr. Toothman. Nor did the Special Master abuse his discretion in doing so. Therefore, Objecting Counsel's appeal is being denied.

## II. PROCEDURAL HISTORY

As indicated earlier, after providing Plaintiffs' Counsel notice and an opportunity to be heard, the court appointed Retired Judge Rosen to serve as Special Master in this case. Among other things, Plaintiffs' Counsel agreed that Judge Rosen was not disqualified from serving under the standards established by 28 U.S.C. §455. See Fed. R. Civ. P. 53(a)(2); Docket No. 129 at 2. Plaintiffs' Counsel have not since modified that view. The Special Master was directed to investigate issues relating to the earlier award to Plaintiffs' Counsel of more than \$75,000,000 in attorneys' fees and expenses, and to submit a report and recommendation to the court. See Docket No. 173.

The Special Master was given the full power provided by Federal Rule of Civil Procedure 53(c)(1), which includes the authority to "take all appropriate measures to perform the assigned duties fairly and efficiently." Fed. R. Civ. P. 53(c)(2); Docket

No. 173, ¶4. The Special Master was specifically authorized to "retain any firm, organization, or individual he deems necessary to assist him in the performance of his duties." Docket No. 173, ¶1 (emphasis added).

In this case, the Special Master has a hybrid role, functioning in part like an investigator and in part like a judicial officer. In recognition of this dual role, as permitted by Federal Rule of Civil Procedure 53(b)(2)(B), the court authorized the Special Master to communicate with any party ex parte. See Docket No. 173, ¶5. It would be impermissible for a judge to have such communications. See, e.g., Guide to Judiciary Policy, Vol. 2A, Ch. 2, Code of Conduct for United States Judges, Canon 3, subpart (A)(4) (precluding a judge from "initiat[ing], permit[ing], or consider[ing] ex parte communications" except where authorized by law or, when circumstances require it, "for scheduling, administrative, or emergency purposes."); Haller v. Robbins, 409 F.2d 857, 859 (1st Cir. 1969). Submissions to the court indicate that the attorney for Plaintiffs' Counsel and the Special Master have had, orally and in writing, direct, ex parte communications. See, e.g., Docket Nos. 193 at 3; 199 at 2, 3.

Among other things, the Special Master told the attorney for Plaintiffs' Counsel that he was considering retaining Mr. Toothman. See, e.g., Docket Nos. 193 at 3; 199 at 2-3. After consulting her clients, she informed the Special Master that they

objected to Mr. Toothman being engaged. Nevertheless Mr. Toothman was retained.

Objecting Counsel subsequently filed with the Special Master a written objection to Mr. Toothman's employment. See Docket No. 194.<sup>1</sup> Objecting Counsel argued that: (1) Mr. Toothman could only be retained as a court-appointed expert pursuant to Federal Rule of Evidence 706; (2) Mr. Toothman's positions in other cases involving attorneys' fees demonstrate that he is biased against attorneys who represent plaintiffs in class actions; and, therefore, (3) Mr. Toothman is not eligible for appointment under Rule 706. See Docket No. 194. More specifically, Objecting Counsel asserted that Mr. Toothman had been previously retained as an expert in another class action by Theodore Frank, Esq., who objected to the reasonableness of the requested attorneys' fees in that case and has attempted to intervene in this case to do so as well. Id. at 5-6.

The Special Master denied the objection. See Docket No. 193. The Special Master explained that Mr. Toothman had not been appointed as an expert witness under Rule 706. Id. at 4-5, 7-8. Rather, Mr. Toothman was engaged as an exercise of the Special

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<sup>1</sup> The other five firms that represented class members have not objected to Mr. Toothman's employment.



Master's authority to retain anyone he deemed necessary to perform his assigned duties. Id. at 4-5.

The Special Master stated that:

Mr. Toothman will be generally responsible for providing consulting services to assist the Special Master and his counsel in fulfilling the duties set forth in the . . . Order of Appointment. The Special Master expects these services to include, among other things, assisting in the preparation and review of discovery and assisting in the analysis of billing and related data.

Id. at 6 (emphasis added). He also wrote that Mr. Toothman's role would be:

confined to assisting the Special Master and his counsel in understanding the technical terms, concepts, and contexts that underlie legal billing practices in the area of commercial class actions based on his specialized knowledge in the area, and how these relate to the specific billing practices in this case.

Id. at 7. The Special Master characterized Mr. Toothman's "role [as] akin to that of a judicial technical expert retained to educate and guide the Special Master and his counsel in this area of their work under the Order of Appointment." Id. at 9 (emphasis added).

The Special Master stated that Plaintiffs' Counsel "cannot point to any evidence that Mr. Toothman is inherently biased or otherwise unqualified to render technical expertise in the area of commercial legal billing practices." Id. The Special Master noted that in support of their claim of bias, Plaintiffs' Counsel relied exclusively on statements Mr. Toothman made in past cases involving

the reasonableness of fee petitions. He found, however, that rather than demonstrate bias, "these cases more aptly demonstrate Mr. Toothman's extensive experience in reviewing complex fee cases." Id. at 9-10.<sup>2</sup>

In support of his conclusion that Mr. Toothman is not biased, the Special Master added:

Mr. Toothman is objectively qualified to provide guidance on legal billing practices. After receiving a Juris Doctor cum laude from Harvard Law School in 1981, Mr. Toothman spent twelve years as a trial attorney handling complex commercial litigation in both the private and public sectors, including as a trial lawyer with the Department of Justice. During that time, Mr. Toothman performed extensive work representing plaintiffs in contingent fee cases and participated in over fifty civil trials, as well as appeals in both the federal and state courts. Throughout his career, Mr. Toothman has also served as a court-appointed receiver, including in one instance on behalf of the U.S. Small Business Administration, and as counsel to bankrupt companies during bankruptcy proceedings. Mr. Toothman has consulted on the topic of legal fees with major corporations and various federal entities and agencies, including the General Accountability Office, the U.S. Department of Justice, and the U.S. Department of Energy, Transportation, and Labor, and has served a six-year term as an Arbitrator for the Virginia State Bar's Fee Dispute Resolution Program. In his work as a consultant, Mr. Toothman has testified in federal and state courts across the country on more than fifty occasions, both in support of and against the award of fees, and has published numerous articles and co-authored a book, Legal Fees: Law and Management,

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<sup>2</sup> For example, the Special Master noted that in one case Objecting Counsel cited as evidence of alleged bias Mr. Toothman discovered that the petitioning law firm recorded more than 24 hours for a single timekeeper for a single day. See Docket No. 193 at 10, n.2.

focusing on legal billing practices. He has also served as an arbitrator of legal fee disputes.

Id. at 4-5 (emphasis added); see also id. at 9, n.1 ("Mr. Toothman has testified both in support of fees and against awarding fees, including testifying in support of fees in several public matters." (citing cases)).

Objecting Counsel appealed the Special Master's denial of their objection concerning Mr. Toothman to the court. See Docket No. 199. They argue, in essence, that Mr. Toothman is a partisan, whose business is to opine that courts should reduce requests for fee awards, and, therefore, his appointment as what they characterize as "a technical advisor" is not permissible or appropriate. Id. at 5-16. The question of the propriety of the appointment of Mr. Toothman as a purported technical advisor was not raised by Objecting Counsel's objection to the Special Master. See Docket No. 194. The court is addressing it nevertheless.

### III. DISCUSSION

The Order appointing the Special Master provides that any objection to an order he issues will be decided by the court in the manner described in Federal Rule of Civil Procedure 53(f). See Docket No. 173, ¶9. As Objecting Counsel recognize, "[t]his court reviews the procedural decision to retain Mr. Toothman for abuse of discretion [pursuant to] Fed. R. Civ. P. 53(f)(5)." Docket No. 199 at 5. The court must decide de novo any conclusions

of law and findings of fact made or recommended by the Special Master. See Fed. R. Civ. P. 53(f)(3)&(4).

To the extent that Objecting Counsel continue to object to the employment of Mr. Toothman based on Federal Rule of Evidence 706, concerning court-appointed expert witnesses, the Special Master did not make an error of law in concluding that the Rule is inapplicable. See Docket No. 193 at 7. The Federal Rules of Evidence apply to "proceedings" before United States District Courts and other courts. See Fed. R. Evid. 1101(a). It is doubtful that the investigation being conducted by the Special Master constitutes such a "proceeding." In any event, as the First Circuit has held, "Rule 706 is confined to court-appointed expert witnesses; the rule does not embrace expert advisers or consultants." Reilly v. United States, 863 F.2d 149, 155 (1st Cir. 1988). Neither the Special Master nor the court has appointed Mr. Toothman to testify as an expert witness. Therefore, Rule 706 does not apply.

As indicated earlier, the Special Master wrote that "Mr. Toothman will be generally responsible for providing consulting services to assist the Special Master and his counsel in fulfilling [their] duties." Docket No. 193 at 6. He also characterized Mr. Toothman's services as "akin to that of a technical advisor retained to educate and guide the Special Master and his counsel." Id. at 9.

As explained earlier, the court gave the Special Master the discretion to "retain any firm, organization, or individual he deems necessary to assist him in the performance of his duties." Docket No. 173, ¶1. The court finds that the Special Master did not abuse his discretion in deciding that employing Mr. Toothman would help his counsel and him "perform [their] assigned duties fairly and efficiently." See Fed. R. Civ. P. 53(c)(1)(B). More specifically, the court finds that the Special Master properly concluded that Mr. Toothman is eligible to perform his defined and limited functions because his prior experience and the opinions he expressed as an expert witness do not manifest a disqualifying bias.

As the First Circuit has written, the "use of [special] masters [is] permitted where desirable to 'bring[ ] to the court skills and experience which courts frequently lack.'" Reilly, 863 F.2d at 156 (quoting Reed v. Cleveland Bd. of Ed., 607 F.2d 737, 747 (6th Cir. 1979)). The corollary of this is that special masters may retain consultants with relevant experience and expertise.

Objecting Counsel's contention that Mr. Toothman should be disqualified from serving as a consultant to the Special Master by virtue of his prior work is inconsistent with their earlier proposal that Retired United States District Judge Layne Phillips be appointed to serve as Co-Special Master with Judge Rosen. See

Docket No. 129 at 2-4. Objecting Counsel represented that Judge Phillips -- who is paid up to \$43,000 a day -- has been previously retained by them and counsel for other parties to mediate class actions, including disputes concerning attorneys' fees. See Docket No. 129 at 3; 129-1 at 3; 129-2, ¶10. Moreover, at the time of his proposed appointment, Judge Phillips was being compensated by Labaton and Lieff, among others, as a mediator in another class action. Nevertheless, Objecting Counsel asserted that there were no grounds for his disqualification. See Docket No. 129 at 4.

In any event, the court finds that Judge Rosen did not err in concluding that Mr. Toothman's prior work does not disqualify him from assisting the Special Master and his counsel in the intended manner. The Special Master found that, like Judge Phillips, Mr. Toothman has been hired to arbitrate fee disputes, and had also testified in support of and against requested fee awards. See Docket No. 193 at 4-5, 9, n.1.

As indicated earlier, Mr. Toothman has been engaged to provide guidance to the Special Master and his counsel in conducting their investigation, reviewing discovery, and understanding concepts concerning legal billing in commercial class actions. See Docket No. 193 at 6. There are many issues, and some controversy, regarding how to determine reasonable compensation for plaintiffs' counsel in class actions. Compare, e.g., Lester Brickman, Lawyer

Barons: What Their Contingency Fees Really Cost America, 311-33 (2011) with Myriam Gilles & Gary B. Friedman, Exploding the Class Action Agency Costs Myth: The Social Utility of Entrepreneurial Lawyers, 155 U. Pa. L. Rev. 103 (2006).

As the court and the Special Master each noted, with regard to the award of attorneys' fees in this and many other class actions, the adversary system does not operate. See Nov. 6, 2016 Tr. at 12, 14; Docket No. 193 at 8. The Special Master reasonably concluded an individual with experience and specialized knowledge would be valuable in organizing the investigation and analyzing voluminous evidence, and, therefore, would contribute to the informed and efficient discharge of the Special Master's duties. The Special Master correctly concluded that Mr. Toothman is qualified to serve in that capacity and not disqualified because of bias.

As explained earlier, the Special Master has a hybrid role in this case, serving in part as an investigator and in part as the counterpart of a magistrate judge making a report and recommendation. The Special Master's investigative role justifies his authority to communicate with the parties ex parte. Similarly, as discussed below, that dimension of his role justifies the retention of Mr. Toothman as a consultant, "akin to" a technical advisor, when such employment by a judge making factual findings

based on a record generated by the adversary process might not be necessary or appropriate.

The Special Master's decision denying the objection to Mr. Toothman's retention reflects a sensitivity to issues that could emerge when a judge, not also acting as an investigator, appoints a technical advisor. See Reilly, 863 F.3d at 157-59. Technical advisors "are not witnesses, and may not contribute evidence." Id. at 157. However, the Special Master does not intend to ask or allow Mr. Toothman to provide any evidence for him to consider. See Docket No. 193 at 10. In any event, any such evidence would be included in the record accompanying the Special Master's Report and Recommendation to the court. See Fed. R. Civ. P. 53(b)(2)(C)&(D); Docket No. 173, ¶11 ("The Master shall make and preserve a complete record of the evidence concerning his recommended findings of fact and any conclusions of law. Such record shall be filed with the Master's Report and Recommendation."). Therefore, the Objecting Plaintiffs would have an opportunity to challenge the credibility of any evidence provided by Mr. Toothman, and the weight, if any, that should be given to it.

The Special Master also does not expect to receive from Mr. Toothman any report of opinions on which the Special Master might rely. See Docket No. 193 at 10. If the Special Master does



receive such a report, he intends to give Plaintiffs' Counsel notice and an opportunity to be heard concerning it. Id.<sup>3</sup>

Technical advisors are also "not judges, so they may not be allowed to usurp the judicial function." Id. The Special Master recognized this principle, stating that he "is not relying on Mr. Toothman to render the final legal opinion as to whether the fees awarded to [Plaintiffs' Counsel] were reasonable or not." Docket No. 193 at 10. As a former Federal Judge, the Special Master is experienced in receiving arguments from lawyers and advice from law clerks, and making independent judgments concerning both. The court is confident that he is capable of doing so in this case.

In addition -- and significantly -- the court will review de novo any recommended findings of fact and conclusions of law as to which Plaintiffs' Counsel object. See Fed. R. Civ. P. 53(f)(3)&(4); Docket No. 173 at 12. Mr. Toothman will not be serving as a consultant, "akin to" a technical advisor, to this court or as a court-appointed expert under Federal Rule of Evidence 706. While the Special Master may benefit from Mr. Toothman's advice in discharging his duties, Plaintiffs' Counsel will receive

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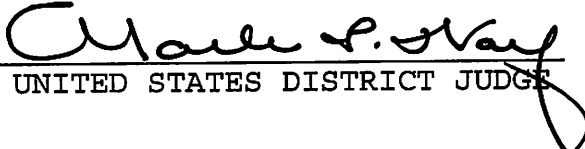
<sup>3</sup> Objecting Counsel assert that they should be allowed to examine Mr. Toothman if he submits an expert report. See Docket No. 199 at 17. If and when such a report is submitted, Objecting Counsel should address their request to examine Mr. Toothman to the Special Master.

full and fair de novo consideration concerning any matters in the Special Master's Report and Recommendation to which they object.

In summary, the court concludes that the Special Master did not make any error of law or fact in finding that Mr. Toothman is eligible to perform the functions for which he has been employed. Nor did the Special Master abuse his discretion in allowing his counsel to retain Mr. Toothman. Therefore, the objection seeking his disqualification is not meritorious.

IV. ORDER

In view of the foregoing, it is hereby ORDERED that Objecting Plaintiffs' Law Firms' Objection to Special Master's Order Regarding Retention of John W. Toothman (Docket No. 199) is DENIED.

  
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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

**LABATON SUCHAROW’S RESPONSE TO THE COURT’S APRIL 26, 2017 ORDER**

Labaton Sucharow LLP (“Labaton Sucharow” or the “Firm”), Lead Counsel for Plaintiff  
Arkansas Teacher Retirement System (“ARTRS”) and the Settlement Class in the above-titled

consolidated actions, respectfully submits this response to the Court's April 26, 2017 Order (ECF No. 203) regarding email addresses for the Settlement Class in this case.<sup>1</sup>

The language referenced by the Court in its April 26 Order from Labaton Sucharow's March 29, 2017 submission (ECF No. 190) was intended to advise the Court that the Firm did not have email addresses for the Class, which could have been used to comprehensively disseminate the supplemental notice. As explained below, this was because the contact list for the Settlement Class (the "Class Member Data"), which was provided by Defendants' Counsel to Labaton Sucharow and used to mail the original notice of the Settlement (the "Notice"), did not include email addresses. Labaton Sucharow did not intend its March 29 submission to suggest that the Firm has *no* individual, isolated email addresses, from any source, for any member of the Class.

The Firm offers the following detail with respect to the relevant chronology:

During a hearing on March 7, 2017, and by subsequent order dated March 8, 2017 (ECF No. 172), the Court directed Labaton Sucharow to file a proposed notice to the Class that would describe the issues that have occurred since the November 2, 2016 hearing regarding the award of attorneys' fees and costs in this matter. ECF No. 172 at 2. The order further required that counsel "explain to the court how this notice will be distributed in a manner comparable to the notice of the preliminary approval of the class settlement." *Id.*

On March 13, 2017, Labaton Sucharow submitted a proposed supplemental notice and proposed method of distribution that largely tracked the distribution method used for the original Notice. ECF No. 180 at 1-3; ECF No. 180-1. The prior Notice had not been distributed to the

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<sup>1</sup> Capitalized terms that are not otherwise defined herein have the same meaning as that provided in the Stipulation and Agreement of Settlement, dated July 26, 2016. ECF No. 89.

Class via email, and the Firm's proposal for supplemental notice likewise did not include distribution via email. *Id.*

On March 20, 2017, the Competitive Enterprise Institute's Center for Class Action Fairness ("CCAF") filed a motion (ECF No. 186) seeking leave to respond to Labaton Sucharow's proposed notice plan. One of the points that CCAF made in its proposed response was that the supplemental notice should also be distributed by email. ECF No. 186-1 at 5.

On or about March 21, 2017, Nicole M. Zeiss, one of the Labaton partners who assisted in preparing the response to CCAF's arguments, asked A.B. Data, Ltd., the Claims Administrator, whether the Class Member Data previously provided by Defendants' Counsel included email addresses. A.B. Data confirmed that it did not. *See* Declaration of Nicole M. Zeiss in Response to the Court's April 26, 2017 Order ("Zeiss Decl."), submitted herewith as Exhibit A, at ¶ 4; *see also* Declaration of Eric J. Miller on Behalf of A.B. Data, Ltd. in Response to the Court's April 26, 2017 Order ("Miller Decl."), submitted herewith as Exhibit B, at ¶ 4.

The Firm submitted its response to CCAF's motion on March 29, 2017. ECF No. 190. With respect to the recommendation that notice be sent via email, the Firm explained that:

CCAF says that notice should be provided by email, but the Firm does not have email addresses for class members. Moreover, email is often problematic because spam filters (particularly when distributions are to large mailing lists) can prevent deliveries.

ECF No. 190 at 4. By this language, the Firm did not intend to suggest that it has *no* email address for *any* member of the Class – indeed, at a minimum the Firm had an email address for its own client in this case, which is a member of the Class. The point that Labaton Sucharow and its undersigned counsel were attempting to convey was that the Firm did not possess a class-wide set of email addresses for purposes of sending a supplemental notice.

Thereafter, the Court ordered that notice be sent, among other methods, “by email to the class members and/or their counsel for whom plaintiffs’ counsel or the Claims Administrator, A.B. Data, Ltd., have an email address.” ECF No. 192, at 4.

As part of its effort to comply with the Court’s order, Ms. Zeiss promptly contacted all plaintiffs’ counsel and requested that they collect any email addresses of Class Members in their possession and either send them to Ms. Zeiss or send them to A.B. Data directly. Zeiss Decl. ¶ 6. The Firm also took steps to determine whether it could locate email addresses in its own records. *Id.*, ¶7.

In total, as a result of its investigation, Labaton Sucharow was able to track down twenty-seven (27) email addresses for Class Members or their attorneys.<sup>2</sup> These addresses can be grouped as follows:

- Sixteen (16) email addresses for current or former Labaton Sucharow clients that the Firm had previously identified as potential Class Members;
- Seven (7) email addresses for Class Members or their counsel who had contacted Labaton Sucharow regarding the Settlement;
- Three (3) email addresses for Class Members or counsel who had communicated with Labaton using the address, [settlementquestions@labaton.com](mailto:settlementquestions@labaton.com); and
- The email address of George Hopkins, the Executive Director of ARTRS (the Firm’s client).

Zeiss Decl., ¶ 8.

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<sup>2</sup> For context, the Class Member Data contained 1,945 mailing addresses for Class Members. *See* Declaration of Eric J. Miller on behalf of A.B. Data, Ltd. Regarding Mailing and Emailing of Supplemental Notice to Settlement Class Members and/or Their Counsel. ECF No. 202, ¶ 3.

Labaton Sucharow provided the twenty-seven (27) addresses it had identified to A.B. Data. *Id.* The Firm also transmitted to A.B. Data eight (8) email addresses that McTigue Law LLP provided in response to Ms. Zeiss's inquiry. *Id.* Of these thirty-five (35) email addresses, twenty-four (24) relate to distinct Class Members (an additional two (2) relate to email addresses at these same organizations); five (5) relate to counsel for absent Class Members; and four (4) relate to counsel in the Henriquez Action. Zeiss Decl., ¶ 9.<sup>3</sup>

Eighty (80) additional email addresses were gathered by A.B. Data. Miller Decl., ¶¶ 6, 8. These email addresses were collected from emails received via the case-dedicated email address [info@StateStreetIndirectFXClassSettlement.com](mailto:info@StateStreetIndirectFXClassSettlement.com), which had been provided to Class Members in the original Notice. *Id.*

As we hope the foregoing explains, the Firm included the referenced language in its March 29, 2017 submission to advise the Court that Labaton Sucharow did not have email addresses for the Settlement Class as a whole or, for that matter, for any significant subset of the Class. Neither Labaton Sucharow nor its counsel intended or anticipated that the language would be construed to suggest that the Firm had no email addresses for any Class Members.

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<sup>3</sup> With respect to the Supplemental Notices emailed to these thirty-five (35) addresses, one (1) email was "blocked" by the recipient's system and was not allowed to be delivered, and two (2) were returned or "bounced" as undeliverable. Miller Decl., ¶ 11.

Dated: May 4, 2017

Respectfully submitted,

*/s/ Joan A. Lukey*

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*Attorneys for Labaton Sucharow LLP*



Certificate of Service

I certify that on May 4, 2017, I caused the foregoing Labaton Sucharow's Response to the Court's April 26, 2017 Order to be filed through the ECF system in above-captioned action No. 11-cv-10230, and accordingly to be served electronically upon all registered participants identified on the Notice of Electronic Filing.

/s/ Joan A. Lukey

Joan A. Lukey

# **Exhibit A**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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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.	)	

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ARNOLD HENRIQUEZ, <i>et al.</i> ,	)	
	)	No. 11-cv-12049 MLW
Plaintiffs,	)	
	)	
v.	)	
	)	
STATE STREET BANK AND TRUST COMPANY,	)	
STATE STREET GLOBAL MARKETS, LLC and	)	
DOES 1-20,	)	
	)	
Defendants.	)	

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THE ANDOVER COMPANIES EMPLOYEE SAVINGS	)	
AND PROFIT SHARING PLAN, <i>et al.</i> ,	)	No. 12-cv-11698 MLW
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
STATE STREET BANK AND TRUST COMPANY,	)	
	)	
Defendant.	)	

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**DECLARATION OF NICOLE M. ZEISS IN  
RESPONSE TO THE COURT'S APRIL 26, 2017 ORDER**

NICOLE M. ZEISS declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a member of the law firm of Labaton Sucharow LLP (“Labaton Sucharow” or the “Firm”), attorneys for Plaintiff Arkansas Teacher Retirement System (“ARTRS”) and Court-appointed Lead Counsel<sup>1</sup> for the Settlement Class in the above-titled consolidated Class Actions. I am admitted to practice before this Court *pro hac vice*.

2. I have been involved in various matters concerning the Settlement, including the process of negotiating and documenting the Settlement Agreement and overseeing the notice program and administration of the Settlement to date. I respectfully submit this declaration in response to the Court’s Order dated April 26, 2017 (ECF No. 203).

3. As background, the August 11, 2016 Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement required State Street Bank and Trust Company to provide the Firm or A.B. Data, Ltd., the Claims Administrator, “information in electronic searchable form containing the names and addresses of Settlement Class Members” to the extent it had not already done so. ECF No. 97, ¶ 8. Consistent with the Order, Defendants’ Counsel provided Labaton Sucharow the names and mailing addresses of Settlement Class Members (“Class Member Data”). Labaton Sucharow promptly sent the Class Member Data to A.B. Data.

4. In the course of preparing Labaton Sucharow’s opposition submission filed on March 29, 2017 (ECF No. 190), a factual issue arose concerning whether disseminating a notice to the Class by e-mail would be feasible. Because it was my general understanding that the Class Member Data did not include e-mail addresses, on or about March 21, 2017, I asked Bradford

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<sup>1</sup> Unless otherwise indicated, capitalized terms have the same meanings as in the Stipulation and Agreement of Settlement, dated as of July 26, 2016 (the “Settlement Agreement,” ECF No. 89).

Amann of A.B. Data whether my understanding was correct. On March 21, 2017, Mr. Amann confirmed that the Class Member Data did not include any e-mail addresses. Labaton Sucharow did not possess an e-mail address list for all Class Members from any other source.

5. On March 31, 2017, the Court issued a Memorandum and Order concerning the supplemental notice, “ordering that notice be sent by mail to class members and/or their counsel, and also by email to the class members and/or their counsel for whom plaintiffs’ counsel or the Claims Administrator, A.B. Data, Ltd., have an email address.” ECF No. 192, at 4.

6. Promptly thereafter, I contacted all plaintiffs’ counsel and requested that they collect any such e-mail addresses in their possession and either send them to me or e-mail them directly to A.B. Data. This effort yielded eight e-mail addresses from McTigue Law LLP. I was not copied on any communications by other plaintiffs’ counsel directly to A.B. Data.

7. I also undertook to determine whether we had individual e-mail addresses internally at Labaton Sucharow for any Class Members in addition to named Plaintiff ARTRS. To that end, I spoke with my partners David J. Goldsmith, who has been closely involved in the State Street case, and Eric J. Belfi, the relationship partner for ARTRS. Based on our communications, I gathered e-mail addresses for a small number of Class Members or their counsel who have been following the litigation or the Settlement. I also checked with a member of the Firm’s case development team and she was able to locate a short list of current and former clients (thought to be State Street custody clients during the Class Period), which was generated when the Firm was investigating the potential claims in the ARTRS Action. Last, I checked with a paralegal who monitors the Firm’s general “settlementquestions@labaton.com” e-mail account.

8. As a result of the efforts described in the preceding two paragraphs, I provided A.B. Data with a total of thirty-five (35) e-mail addresses consisting of the following: (a) sixteen

(16) current or former Labaton Sucharow clients that the Firm had previously identified as potential Class Members (I confirmed that they were included in the Class Member Data); (b) eight (8) e-mail addresses for certain Class Members and their counsel that were provided to me by McTigue Law LLP; (c) seven (7) e-mail addresses for certain Class Members or counsel who had contacted attorneys at Labaton Sucharow about the Settlement; (d) three (3) e-mail addresses for certain Class Members or counsel who had contacted Labaton Sucharow using our “settlementquestions@labaton.com” e-mail address; and (e) the e-mail address of George Hopkins of ARTRS.

9. Overall, of these thirty-five (35) e-mail addresses, twenty-four (24) relate to distinct Class Members (an additional two (2) relate to e-mail addresses at these same organizations) and five (5) relate to counsel for absent Class Members. An additional four (4) e-mail addresses relate to counsel in the Henriquez Action.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 4, 2017.

/s/ Nicole M. Zeiss  
NICOLE M. ZEISS

# **Exhibit B**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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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.	)	

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ARNOLD HENRIQUEZ, <i>et al.</i> ,	)	
	)	No. 11-cv-12049 MLW
Plaintiffs,	)	
	)	
v.	)	
	)	
STATE STREET BANK AND TRUST COMPANY,	)	
STATE STREET GLOBAL MARKETS, LLC and	)	
DOES 1-20,	)	
	)	
Defendants.	)	

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THE ANDOVER COMPANIES EMPLOYEE SAVINGS	)	
AND PROFIT SHARING PLAN, <i>et al.</i> ,	)	No. 12-cv-11698 MLW
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
STATE STREET BANK AND TRUST COMPANY,	)	
	)	
Defendant.	)	

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**DECLARATION OF ERIC J. MILLER ON BEHALF OF A.B. DATA, LTD.  
IN RESPONSE TO THE COURT'S APRIL 26, 2017 ORDER**



I, Eric J. Miller, declare as follows, pursuant to 28 U.S.C. §1746:

1. I am a Vice President of A.B. Data, Ltd.'s Class Action Administration Division ("A.B. Data"), whose Corporate Office is located in Milwaukee, Wisconsin. Pursuant to the Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, entered on August 11, 2016 (the "Preliminary Approval Order"),<sup>1</sup> A.B. Data was authorized to act as the Claims Administrator in connection with the Settlement in the above-captioned actions. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein based on my involvement with the Settlement and close supervision of others who report to me and, if called as a witness, could and would testify competently thereto.

2. I respectfully submit this declaration in response to the Court's Order dated April 26, 2017 (ECF No. 203) and as a supplement to the Declaration of Eric J. Miller on Behalf of A.B. Data, Ltd. Regarding Mailing and Emailing of Supplemental Notice to Settlement Class Members and/or Their Counsel, dated April 25, 2017 (ECF No. 202) ("Supplemental Mailing Declaration").

3. As background, on July 27, 2016, Nicole M. Zeiss of Labaton Sucharow LLP ("Labaton Sucharow") provided A.B. Data with the names and mailing addresses of Settlement Class Members ("Class Member Data"), to enable A.B. Data to carry out a Court-approved notice program.

4. On March 21, 2017, responding to what I understand was an inquiry from Ms. Zeiss, Bradford Amann, a Project Manager at A.B. Data working on this matter under my

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<sup>1</sup> All capitalized terms used herein that are not defined have the same meaning as that provided in the Stipulation and Agreement of Settlement, dated July 26, 2016.

supervision, e-mailed Ms. Zeiss and myself and confirmed that the Class Member Data did not include any e-mail addresses.

5. On March 31, 2017, Ms. Zeiss e-mailed A.B. Data a copy of the Court's Memorandum and Order concerning the supplemental notice, "ordering that notice be sent by mail to class members and/or their counsel, and also by email to the class members and/or their counsel for whom plaintiffs' counsel or the Claims Administrator, A.B. Data, Ltd., have an email address." ECF No. 192, p. 4.

6. Promptly thereafter, among other things, A.B. Data undertook to gather individual e-mail addresses for any Settlement Class Members that had contacted A.B. Data in response to the original notice of the Settlement (the "Notice"). To that end, A.B. Data reviewed the e-mails received by the case-dedicated e-mail address [info@StateStreetIndirectFXClassSettlement.com](mailto:info@StateStreetIndirectFXClassSettlement.com), which had been provided to Class Members in the original Notice. Mr. Amann also searched his individual A.B. Data e-mail in-box.

7. On April 18, 2017, Labaton Sucharow provided us with a list of thirty-five (35) e-mail addresses to use in the notice dissemination. We did not receive e-mail addresses from other plaintiffs' counsel.

8. As a result of the efforts described above, A.B. Data gathered a total of one hundred fifteen (115) unique e-mail addresses consisting of the following: (a) eighty (80) unique e-mail addresses associated with e-mails received by [info@StateStreetIndirectFXClassSettlement.com](mailto:info@StateStreetIndirectFXClassSettlement.com), which we were able to verify as belonging to Class Members using the Class Member Data; and (b) thirty-five (35) e-mail addresses received from Labaton Sucharow. (A.B. Data did not identify any unique addresses that were received solely by Mr. Amann.)

9. On April 18, 2017, as stated in my Supplemental Mailing Declaration, A.B. Data caused the Supplemental Notice to be e-mailed to these 115 e-mail addresses. ECF No. 202, ¶ 4.

10. With respect to the Supplemental Notices e-mailed to the eighty (80) e-mail addresses gathered by A.B. Data, one (1) e-mail was “blocked” by the recipient’s system and was not allowed to be delivered, two (2) were returned (or “bounced”) as undeliverable, and we received one (1) auto-reply message indicating that the recipient no longer works for the company.

11. With respect to the Supplemental Notices e-mailed to the thirty-five (35) e-mail addresses provided by Labaton Sucharow, one (1) e-mail was “blocked” by the recipient’s system and was not allowed to be delivered, and two (2) were “bounced” as undeliverable.

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

Executed this 4th day of May, 2017.

/s/Eric J. Miller  
Eric J. Miller