

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 11-cv-10230 MLW

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

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY, STATE  
STREET GLOBAL MARKETS, LLC and DOES 1-20,

Defendants.

No. 11-cv-12049 MLW

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

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 12-cv-11698 MLW

**MOVING PARTIES' MOTION TO SET REVISED SCHEDULE FOR  
REQUESTED REDACTIONS AND THE UNSEALING OF THE SPECIAL  
MASTER'S REPORT AND RECOMMENDATION**

Counsel for all parties to this action have conferred, as directed by the Court in its Order following Customer Class Counsels' Emergency Objection to Order that Sealed Report and Recommendation and Related Documents be Provided in Unredacted Form to State Street (ECF No. 228). The Moving Parties<sup>1</sup> now jointly request that the Court (1) adjust the schedule for submissions of requests for redaction, in order to provide a brief additional period (eleven days) for counsel to make such submissions, and build in a process that would allow State Street's counsel to review the materials simultaneously on an attorneys' eyes only basis and to request redactions if necessary; (2) confirm that the Court will hold a closed hearing on the parties' requested redactions before ruling on same; and (3) clarify and, if necessary and appropriate, modify the timing for the release of the redacted Master's Report and Recommendations, Executive Summary, and related exhibits (hereafter the "Master's Report"), as set forth more fully herein.

In support of this motion, the Moving Parties say the following.

1. On March 8, 2017, the Court appointed Retired United States District Judge Gerald Rosen as a Master to investigate, prepare, and submit a Report and Recommendation concerning issues relating to the award of attorneys' fees in this case. March 8, 2017 Order (ECF No. 173).

2. On October 24, 2017, the Court modified its March 8, 2017 Order to provide that "the Master shall file his Report and Recommendation with the court under seal; the court will

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<sup>1</sup> "Moving Parties" refers to those law firms whose signature blocks appear below, and consist of Labaton Sucharow LLP ("Labaton"), Lief Cabraser Heimann and Bernstein, LLP ("Lief"), the Thornton Law Firm LLP ("Thornton"), Keller Rohrback L.L.P., and Zucker Spaeder LLP. The positions of State Street Bank and Trust Company ("State Street"), McTigue Law LLP ("McTigue Law"), and the Special Master, are set forth in footnotes placed within the relevant sections below.

provide the Report and Recommendation to the parties, under seal; and the court will establish schedules for proposed redactions and objections.” October 24, 2017 Order (ECF No. 208), at 3.

3. On March 1, 2018, the Court ordered that the record (the “Record”), like the Master’s Report, be submitted to the Court under seal to allow the parties to propose appropriate redactions before a version of the record is made part of the public record. March 1, 2018 Order (ECF No. 217), at 2.<sup>2</sup>

4. On March 14, 2018, the Special Master filed under seal his Report and Recommendations, accompanied by exhibits and an Executive Summary (i.e., the “Master’s Report”). In total these materials constitute approximately 10,000 pages, including 62 complete deposition transcripts (which are in minuscrit form, and thus contain four transcript pages on each page).

5. On May 16, 2018, the Court set the schedule for the parties to propose redactions to the Master’s Report. *See* Memorandum and Order (the “Order Regarding Redactions”), ECF No. 223. The Order Regarding Redactions directs that the parties shall file, by May 31, 2018, “any motion for redactions, with documents reflecting the proposed redactions, and supporting affidavits and memoranda in the manner described in this Memorandum,” for the entirety of the Master’s 10,000 page submission. *Id.* at 5. The order directs the parties to file redacted versions of the Master’s Report and Recommendations (*id.*), although there is some question among counsel as to whether the Court intended for redacted versions of the Master’s Report to be filed publicly at that time, or only provided to the Court under seal.

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<sup>2</sup> On May 15, 2018, Labaton, Lieff and Thornton (collectively, “Customer Class Counsel”) filed a motion asking that the Court clarify whether the entire record should be filed. *See* Customer Class Counsels’ Motion for Clarification or Modification of the Court’s March 8, 2017 and March 1, 2018 Orders to Eliminate the Requirement for the Master to File All Documents Produced in Discovery With the Court (ECF No. 222).

6. On May 17, 2018, the Court ordered that the unredacted Master's Report be provided to State Street, so that State Street also may have the opportunity to request appropriate redactions. May 17, 2018 Order (ECF No. 225). This prompted the objection from Customer Class Counsel referenced above, after which the Court temporarily vacated the order and directed the parties to confer and report back regarding, among other things, a mechanism "to address any concerns concerning confidentiality of information State Street submitted that it or its counsel may have." May 17, 2018 Order (ECF No. 228).

7. Counsel for all parties have now conferred, and the Moving Parties propose that the Court adjust the schedule for submissions and release of the redacted Master's Report as follows:

**Schedule for Submissions**

8. First, the Moving Parties respectfully request eleven additional days, until June 11, 2018, to submit their motions for redactions along with the necessary affidavits and legal support. Given the significant volume of the materials the Special Master has filed, which includes 62 complete deposition transcripts, counsel believe this brief, additional time is necessary so that they can make informed decisions about which matters they propose for redaction and can prepare and file the necessary submissions.<sup>3</sup>

9. Second, as the Court has noted, State Street should be afforded an opportunity to review the Master's Report and propose redactions as well. But, as pointed out in the Objection referenced above (ECF No. 227), Plaintiffs' counsel are concerned about a waiver of privilege should the materials be provided in unredacted form. In order to resolve this issue without unduly delaying the request for redaction process, the Moving Parties request that the Court

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<sup>3</sup> State Street agrees with the relief requested. The Special Master and McTigue Law take no position.

order that the Master's Report be provided to counsel for State Street immediately on these terms: (1) the materials must be maintained by counsel for State Street on an attorneys' eyes only ("AEO") basis, such that only State Street's outside counsel from WilmerHale may review the unredacted documents, without sharing such documents or their contents with their client; and (2) the provision of these materials to WilmerHale shall not constitute a waiver of the attorney-client privilege, work product protection or any other privilege or protection.<sup>4</sup>

### **Request for Hearing**

10. The Court's prior orders setting the schedule and process for requesting redactions and/or continued sealing of the Master's Report do not expressly provide for a hearing on the parties' requests. ECF 208, 217. The Moving Parties hereby seek clarification that the Court intends to, and will, hold a hearing or hearings on the redaction and sealing requests before the Court rules on the requests.

11. Because the presentations of counsel will relate to materials that are still under seal, the Moving Parties request that the hearing(s) be closed. Otherwise, it will not be feasible for counsel to argue without publicly disclosing materials that are at least temporarily sealed.<sup>5</sup>

### **Release of the Redacted Report and Recommendation and Related Materials**

12. The Court's Order Regarding Redactions provides that, when counsel file (under seal) any motion for redactions, they must include "documents reflecting the proposed redactions." ECF No. 223 at p. 5, ¶2. The order also says that "redacted versions of these submissions shall be filed for the public record." *Id.*

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<sup>4</sup> State Street agrees with the relief requested. The Special Master and McTigue Law have no objection.

<sup>5</sup> The Special Master and McTigue Law have no objection to this request, as long as any non-public hearing is limited to discussion of the proposed redactions, and reasons therefor, and does not involve substantive matters related to the Master's Report, which will be discussed at a later date. State Street agrees with the relief requested, and with the Special Master's interpretation of the relief requested.

13. The Moving Parties respectfully request clarification that, if any such filing is to occur at this time, it must be in the form of one consolidated redacted version including all parties' redactions, and clarification as to whether they are directed to file such a consolidated redacted version of the Master's Report on the public docket, or to do so under seal with the Court, on the same day that they file their requests for redactions. The Moving Parties request that any public filing be deferred at least until after the redactions are determined by the Court.<sup>6</sup>

14. The Moving Parties also respectfully request that the public filing of a redacted version of the Report and Recommendations occur (1) after the Court has ruled on the parties' objections to the Master's Report; or, at a minimum, (2) after the parties have filed their objections to the Master's Report. This process will result in a more orderly release of a single, redacted version of the report approved by the Court, rather than the release of a version with *requested* redactions that are subject to change by the Court. This process will also allow for a balanced release of information, such that the public will be aware of conflicting views of fact and law between and among the parties and the Special Master.<sup>7</sup>

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<sup>6</sup> The Special Master and McTigue Law have no objection to seeking guidance from the Court on this issue. However, they do not believe redacted versions of the Report & Recommendations need be filed under seal. It is the Special Master's and McTigue Law's position that any information that is not redacted by the Court should be made available to the public.

If there will be a consolidated redacted version of the report and exhibits containing all suggested redactions of all parties, then State Street takes no position on when it is filed; if there will be multiple redacted versions of the report and exhibits submitted, then State Street's position is that the public should not see anything until the redactions are consolidated and finalized (or the public will end up seeing things that should be redacted but which are not redacted by all parties).

<sup>7</sup> The Special Master and McTigue Law oppose this request to the extent it requires withholding the fully-redacted Report and exhibits from the public for any period of time beyond that necessary to file on ECF. It is their position that the Court should follow the same procedure used for all other Court orders and decisions in this jurisdiction, and, as prescribed by the Court, file the redacted Report and exhibits on the docket after the issue of redactions has been settled. At that point, the parties will have the opportunity to publicly file their objections, also on the case docket, and advocate their positions. The Special Master and McTigue Law believe the Master's Report involves a matter of high public interest and do not support this request.

State Street takes no position on this request.

**Conclusion**

15. Wherefore, the Moving Parties respectfully request that the Court adjust the timing for submissions regarding redaction/maintaining under seal, and order the following:

- (a) The deadline for counsel to make the submissions set forth in the Court's Order Regarding Redactions, ECF No. 223, is extended to June 11, 2018;
- (b) Counsel for the Special Master shall provide the Report and Recommendations, Executive Summary, and exhibits to counsel for State Street forthwith subject to these conditions: Counsel for State Street at WilmerHale shall maintain these materials on an "attorneys' eyes only" basis, and shall not share the documents or the contents thereof with their client. The provision of these documents shall not constitute a waiver of the attorney-client privilege, work product, or any other privilege or protection;
- (c) Counsel shall not be required to file a public, redacted version of the Report and Recommendations, Executive Summary and exhibits with its request for redactions;
- (d) The Court will hold a closed hearing on any requests for redactions that the parties file in accordance with the procedure outlined by the Court; and
- (e) The Report and Recommendations, Executive Summary, and exhibits shall remain under seal until the Court rules on the parties' Objections thereto [or, until the parties file their Objections thereto].

WHEREFORE, the Moving Parties respectfully request that the Court grant the relief requested herein.

Dated: May 24, 2018

Respectfully submitted,

By: /s/ Joan A. Lukey

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*Counsel for Arnold Henriquez, Michael  
T. Cohn, William R. Taylor and Richard  
ASutherland*

**LOCAL RULE 7.1(a)(2) CERTIFICATION**

I hereby certify that I conferred with counsel for State Street, McTigue Law LLP, and counsel for the Special Master, and that their position is set forth in the footnotes to this motion.

May 24, 2018.

/s/ Joan A. Lukey

Joan A. Lukey

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to all counsel of record on May 24, 2018.

*/s/ Joan A. Lukey*

\_\_\_\_\_  
Joan A. Lukey

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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

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STATE STREET BANK AND TRUST COMPANY,

Defendant.

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No. 11-cv-10230 MLW

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PEHOUSHEK-STANGELAND, and all others similarly  
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STATE STREET BANK AND TRUST COMPANY,

Defendant.

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No. 12-cv-11698 MLW

**[PROPOSED] ORDER ON MOVING PARTIES' MOTION TO SET  
REVISED SCHEDULE FOR REQUESTED REDACTIONS AND THE  
UNSEALING OF THE SPECIAL MASTER'S REPORT AND  
RECOMMENDATION**

The positions of all parties and the Special Master having been taken into consideration, it is hereby ORDERED that:

1. The deadline for counsel to make the submissions set forth in the Court's Order Regarding Redactions, ECF No. 223, is extended until June 11, 2018;
2. Counsel for the Special Master shall provide the Report and Recommendations, Executive Summary, and exhibits to counsel for State Street forthwith subject to these conditions: Counsel for State Street at WilmerHale shall maintain these materials on an "attorneys' eyes only" basis, and shall not share the documents or the contents thereof with their client. The provision of these documents shall not constitute a waiver of the attorney-client privilege, work product, or any other privilege or protection;
3. Counsel shall not be required to file a public, redacted version of the Report and Recommendations, Executive Summary and exhibits with its request for redactions;
4. The Court will hold a closed hearing on any requests for redactions that the parties file in accordance with the procedure outlined by the Court; and
5. The Report and Recommendations, Executive Summary and exhibits shall remain under seal until the Court rules on the parties' Objections thereto [or, until the parties file their Objections thereto].

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
HON. MARK L. WOLF  
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,

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Defendant.

No. 12-cv-11698 MLW

**CUSTOMER CLASS COUNSEL'S RESPONSE TO MAY 17, 2018  
MEMORANDUM AND ORDER (ECF NO. 226)**

Following entry of the Court's May 17, 2018 Memorandum and Order (ECF No. 226), counsel for Labaton Sucharow LLP ("Labaton"), Lief Cabraser Heimann & Bernstein LLP ("Lief") and the Thornton Law Firm ("Thornton") (collectively, "Customer Class Counsel") have conferred with Keller Rohrback, LLP, Zuckerman Spaeder, LLP, and McTigue Law, LLP (collectively, "ERISA Counsel"); counsel for State Street Bank and Trust Company ("State Street"); and counsel for the Special Master. In response to the two items raised by the Court, Customer Class Counsel report as follows:

1. With respect to Customer Class Counsels' Motion for Clarification or Modification of the Court's March 8, 2017 and March 1, 2018 Orders to Eliminate the Requirement for the Master to File All Documents Produced In Discovery With The Court (ECF No. 222):

(a) Keller Rohrback, LLP and Zuckerman Spaeder, LLP consent to the relief requested.

(b) State Street supports the relief requested and in addition requests the opportunity to brief the Court on the impact of any alternative on the proprietary and other privacy interests of State Street and its customers after disclosure to State Street of the contents of the record and the source of the information contained in the record.

(c) Counsel for the Special Master responds as follows: "The Special Master is bound by the Court's orders in this case, and, therefore, cannot support a position that conflicts with the mandate of the Court. The Special Master, thus, defers to the Court's 3/8/17 Order (providing that "The Masters 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") and its 3/1/18

Order reaffirming that a full record is required (“The complete record of the evidence concerning the Master’s recommended findings of fact and conclusion of law must also be filed.”) See also Fed. R. Civ. P. 53(b)(2)(C) and 2003 Advisory Committee Notes (“A basic requirement [] is that the master must make and file a complete record of the evidence considered in making or recommending findings of fact on the basis of evidence.) Given the public interest in this case, the Special Master would oppose any attempt to limit the record beyond such matters as privilege and proprietary interests.”<sup>1</sup>

(d) McTigue Law, LLP joins the position of the Special Master.

2. Customer Class Counsel, ERISA Counsel, counsel for State Street, and counsel for the Special Master agree that going forward, before filing a motion, they will confer with each other pursuant to Local Rule 7.1(a)(2).

Dated: May 24, 2018

Respectfully submitted,

By: /s/ Joan A. Lukey

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*Counsel for Labaton Sucharow LLP*

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<sup>1</sup> Customer Class Counsel intend to seek leave to file a brief memorandum in support of their Motion for Clarification, in order to respond to the Special Master’s position as set forth herein.

By: /s/ Richard M. Heimann  
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*Counsel for The Thornton Law Firm LLP*

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to all counsel of record on May 24, 2018.

/s/ Joan A. Lukey  
Joan A. Lukey



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,	)	
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v.	)	
	)	
STATE STREET BANK AND TRUST COMPANY,	)	
	)	
Defendant.	)	

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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.	)	

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THE ANDOVER COMPANIES EMPLOYEE SAVINGS	)	
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STATE STREET BANK AND TRUST COMPANY,	)	
	)	
Defendant.	)	

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**SPECIAL MASTER’S REPORT ON CUSTOMER CLASS COUNSELS’ MOTION FOR  
CLARIFICATION OR MODIFICATION OF THE COURT’S MARCH 8, 2017 AND  
MARCH 1, 2018 ORDERS TO ELIMINATE THE REQUIREMENT FOR THE MASTER  
TO FILE ALL DOCUMENTS PRODUCED IN DISCOVERY WITH THE COURT**

Pursuant to the Court's May 17, 2018 Memorandum and Order (Dkt. # 226), the Special Master has conferred with Customer Class Counsel and files this motion to memorialize the Special Master's position on the above-captioned motion requesting a clarification, or in the alternative, a modification of the Court's clear mandate that the Special Master file with the Court the complete record of all evidence compiled in his investigation. As described in detail below, the Special Master is bound by the Court's orders entered to date in this case, as informed by Fed. R. Civ. P. 53, and, therefore, cannot -- and does not -- support Customer Class Counsels' request to modify the requirement that a complete record be filed in this case. This request directly contradicts the Court's clear direction to the parties on this issue.

The Court appointed the Special Master on March 8, 2017. The Court's Appointment Order entered that same day required the Special Master to, among other tasks, "make and preserve *a complete record* of the evidence concerning his recommended findings of fact and any conclusions of law." (emphasis added). 3/8/17 Order, p. 5. The Appointment Order authorized the Special Master to "compel, take, and record evidence," including requesting the "production of documents and other records from the parties and third-parties; [] responses to interrogatories, and other requests for information and admissions; [] depositions; and [] hearings." *Id.*, pp. 3-4. This evidence comprises the "record" in this case.

The Appointment Order is unambiguous. It states that the Special Master shall create and preserve "a complete record of the evidence," and that the record must be filed with the Special Master's Report and Recommendations.<sup>1</sup> *Id.*, p. 5. While the Special Master can move to file the record under seal, the Court maintains discretion whether to file a redacted version for the public.

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<sup>1</sup> To promote efficiency of these proceedings, the Court has granted the Special Master several additional weeks to submit the complete record in this case. *See* 5/16/18 Memorandum and Order (Dkt. # 223), pg. 2, n.1. Thus, the record that the Customer Class Counsel seek to limit in the above-described motion has not yet been filed with the Court.

*Id.* There is no doubt that the record to be filed, and potentially redacted, is the “complete record” of evidence.

The Court’s March 1, 2018 Order leaves no doubt that the Court intended for the Special Master to file a record of *all* evidence that informed his factual findings and conclusions of law set forth in the Report & Recommendations. The Order reaffirms that the “*complete record of the evidence concerning the Master’s recommended findings of fact and conclusions of law must also be filed*” with the Court. (emphasis added). 3/1/18 Order, pg. 2. That the Court intended, and expected, this submission to encompass *all* documents collected by the Special Master – not simply those hand-selected by the parties – is evidenced by the Court’s instruction to submit the record in “searchable electronic form” as well as in affording the parties an opportunity to propose redactions before making it a public record. This type of comprehensive record is, moreover, what the drafters of Fed. R. Civ. P. 53 – the rule enabling the Special Master’s appointment – foreshadowed. *See* Fed. R. Civ. P. 53(b)(2)(C)(appointment order must state the “nature of the materials to be preserved and filed as the record of the master’s activities”), 2003 Advisory Committee Notes (“A basic requirement [] is that the master must make and file a complete record of the evidence considered in making or recommending findings of fact on the basis of evidence.”) The Special Master sees no need for clarification.

As to Customer Class Counsels’ request to modify this mandate, the Special Master is bound by, and therefore, follows the Court’s 3/8/17 Order, as reaffirmed in its 3/1/18 Order. Through those orders, the Court has directed the Special Master to file the complete record including all discovery received in this case. The Special Master will do so unless the Court directs it to do otherwise. The Customer Class Counsels’ current attempt to modify those orders

must be taken up with the Court; and given his clear mandate, the Special Master cannot, and does not, support this or any request to restrict the record filed publicly in this case.

Dated: May 25, 2018

Respectfully submitted,

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

By his attorneys,

/s/ William F. Sinnott

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Email: [emcevoy@barrettsingal.com](mailto:emcevoy@barrettsingal.com)

**UNITED STATES DISTRICT COURT  
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No. 12-cv-11698 MLW

**CUSTOMER CLASS COUNSELS' MOTION FOR LEAVE TO FILE  
MEMORANDUM IN SUPPORT OF MOTION FOR CLARIFICATION OR  
MODIFICATION REGARDING THE FILING OF ALL DOCUMENTS  
PRODUCED IN DISCOVERY WITH THE COURT**

Pursuant to District of Massachusetts Local Rule 7.1(b)(3), Labaton Sucharow LLP (“Labaton”), Lief Cabraser Heimann & Bernstein LLP (“Lief”), and the Thornton Law Firm (“TLF”) (collectively, “Customer Class Counsel”) respectfully move for leave to file the Memorandum, attached hereto as Exhibit A, in further support of their Motion for Clarification or Modification of the Court’s March 8, 2017 and March 1, 2018 Orders to Eliminate the Requirement for the Master To File All Documents Produced In Discovery With The Court (“Motion”), filed May 15, 2018 (ECF No. 222). In support of this motion for leave, Customer Class Counsel state as follows:

1. In the Motion (ECF No. 222), Customer Class Counsel seek clarification or modification of the Court’s March 8, 2017 Order (ECF No. 173 at ¶ 11), as reiterated in the Court’s March 1, 2018 Order (ECF No. 216 at p. 2), to limit the filing of the documents produced in discovery before the Master to those which would traditionally be part of a judicial record, i.e., (a) the exhibits to the Master’s Report and Recommendation, (b) such additional documents as the Master may wish to add, (c) such additional documents as any party believes to be appropriate in this *de novo* review period, and (d) any other documents the Court requests.

2. Customer Class Counsel filed the Motion on May 15, 2018, after learning that the Master interpreted the Court’s orders, referenced above, to require the filing of the entire discovery record generated in connection with the proceedings before the Master. That record includes over 234,000 pages of documents produced by Customer Class Counsel alone, in addition to many other categories of documents. Customer Class Counsel do not read the Court’s orders as requiring that this full record be filed (if “filing” through the normal process is even possible for such a volume of materials). Moreover, filing of this entire discovery record would require counsel to go through the voluminous production, identify specific portions that

parties wish to be maintained under seal, and submit the requisite filings for each such request. Such a project on a body of documents consisting of hundreds of thousands of pages would be enormous, and would be extremely time-consuming and costly.

3. On May 17, 2018, the Court issued a Memorandum and Order (ECF No. 226) requiring counsel to consult and report back with the position of the other parties, and the Master, with respect to the Motion. In accordance with that mandate, counsel for Labaton conferred with (among others) counsel for the Master. In a response sent late in the day on Tuesday, May 22, the Master's counsel (i) advised that the Master interprets the Court's orders as requiring the filing of the full discovery record, and (ii) went on to argue that such a filing is required under the applicable rules of civil procedure:

The Special Master is bound by the Court's orders in this case, and, therefore, cannot support a position that conflicts with the mandate of the Court. The Special Master, thus, defers to the Court's 3/8/17 Order (providing that "The Masters 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") and its 3/1/18 Order reaffirming that a full record is required ("The complete record of the evidence concerning the Master's recommended findings of fact and conclusion of law must also be filed.") See also Fed. R. Civ. P. 53(b)(2)(C) and 2003 Advisory Committee Notes ("A basic requirement [] is that the master must make and file a complete record of the evidence considered in making or recommending findings of fact on the basis of evidence.).

4. The Court's May 17 Memorandum and Order (ECF No. 226) directed that if possible, the parties should put their respective views in one filing. Accordingly, Customer Class Counsel quoted the Master's response in full when they filed a consolidated submission reporting the various parties' positions to the Court. (ECF No. 230 at 2-3).

5. A few hours after Customer Class Counsel filed the report ordered by the Court, which fully set forth all parties' positions (including that of the Master), the Master filed an additional, separate document that reiterated his position. (ECF No. 231.) Once again, the

Master's statements in this filing were not limited to setting forth his view that the Court's orders require him to file the full record; he also advocated in favor of a full filing, citing authority that he contends supports that position.

6. With all due respect to the Master, his position is not correct. The law does not mandate that the full record be filed, nor would such an unusual requirement be consistent with typical First Circuit practice. For this and other reasons, Customer Class Counsel respectfully request that they be permitted to file the brief memorandum of law in further support of their Motion, attached hereto as Exhibit A, to respond to the Master's position, and to offer further authority to demonstrate that the filing of hundreds of thousands of pages of a discovery record is not appropriate in these circumstances.

WHEREFORE, for the reasons set forth herein and pursuant to District of Massachusetts Local Rule 7.1(b)(3), Customer Class Counsel respectfully request that the Court grant leave to file the attached Memorandum in support of the above-referenced Motion.

Dated: May 25, 2018

Respectfully submitted,

By: /s/ Joan A. Lukey

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*Counsel for The Thornton Law Firm LLP*

**LOCAL RULE 7.1(a)(2) CERTIFICATION**

I hereby certify, following conferral with counsel, that State Street, the Special Master, Keller Rohrback L.L.P., Zuckerman Zpaeder LLP, and McTigue Law LLP assent to the relief requested herein.

May 25, 2018.

/s/ Justin J. Wolosz

Justin J. Wolosz

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to all counsel of record on May 25, 2018.

*/s/ Joan A. Lukey* \_\_\_\_\_

Joan A. Lukey

# **Exhibit A**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 11-cv-10230 MLW

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

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY, STATE  
STREET GLOBAL MARKETS, LLC and DOES 1-20,

Defendants.

No. 11-cv-12049 MLW

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

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 12-cv-11698 MLW

**CUSTOMER CLASS COUNSELS' MEMORANDUM IN SUPPORT OF  
THEIR MOTION FOR CLARIFICATION OR MODIFICATION OF THE  
COURT'S MARCH 8, 2017 AND MARCH 1, 2018 ORDERS TO  
ELIMINATE THE REQUIREMENT FOR THE MASTER TO FILE ALL  
DOCUMENTS PRODUCED IN DISCOVERY WITH THE COURT**

Labaton Sucharow LLP (“Labaton”), Lief Cabraser Heimann & Bernstein LLP (“Lief”), and the Thornton Law Firm (“TLF”) (collectively, “Customer Class Counsel”) respectfully submit this memorandum in support of their Motion for Clarification or Modification (“Motion”), filed May 15, 2018 (ECF 222). As set forth in that motion, Customer Class Counsel move for a clarification or modification of the Court’s March 8, 2017 Order (Docket No. 173 at ¶ 11), as reiterated in the Court’s March 1, 2018 Order (Docket No. 216 at p. 2) (collectively, “the Orders”), to limit the filing of the documents produced in discovery to that which would traditionally be part of a judicial record, i.e., (a) the exhibits to the Special Master’s Report and Recommendation, (b) such additional documents as the Master may wish to add, (c) such additional documents as any party believes to be appropriate in this *de novo* review period, and (d) any other documents the Court requests.

The Master asserts that he is constrained to file the entire discovery record, which consists of, among other materials, over 234,000 pages of documents produced by Customer Class Counsel. Respectfully, the Master’s position is at odds with judicial precedent and may read too much into this Court’s Orders, which require the Master to file the record “concerning” his Report. *See* ECF 173; ECF 216. The Master’s Report already attaches a voluminous record: 266 exhibits, totaling 9,559 pages and comprised of transcripts, documents produced by Customer Class Counsel, interrogatory responses, pleadings, and other materials. This substantial record “concerns” the Master’s report, as would any additional materials that the Master or the parties wish to add. The remaining discovery materials do not. Moreover, the Master’s position threatens to drag the parties and the Court into an extraordinarily expensive and unnecessary redaction process, a result that Rule 53 cautions against. *See* Fed. R. Civ. P. 53(a)(3) (“In appointing a master, the court must consider the fairness of imposing the likely

expenses on the parties and must protect against unreasonable expense or delay.”). In order to avoid this unnecessary burden and expense, Customer Class Counsel request that the Court enter an order providing that the filed record will consist of the Master’s Report and other categories of documents listed above, and will not include the remaining portions of the full discovery record.

### **PROCEDURAL BACKGROUND**

In its March 8, 2017 Order (ECF 173) (the “Appointing Order”), the Court ordered that the “Master shall make and preserve a complete record of the evidence concerning his recommended findings of fact and any conclusions of law,” to be “filed with the Master’s Report and Recommendation.” ECF 173 at ¶ 11. On March 1, 2018, the Court confirmed that, in addition to the Master’s Report, “[t]he complete record of the evidence concerning the Master’s recommended findings of fact and conclusions of law must also be filed. See Mar. 8, 2017 Memorandum and Order (Docket No. 173), ¶ 11.” ECF 216 at p. 2.

Through its Appointing Order, the Court empowered the Master to “compel, take, and record evidence,” which includes the authority to propound document requests and interrogatories. ECF 173 at ¶ 4. The Master made extensive use of this authority: he issued voluminous, broad discovery requests and received significant document productions from Customer Class Counsel, totaling over 234,000 pages from these three law firms alone<sup>1</sup>; he propounded numerous interrogatories and received voluminous responses; and he conducted 56 depositions of fact witnesses.<sup>2</sup>

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<sup>1</sup> This number does not include productions by ERISA counsel, if any, which Customer Class Counsel would not have seen. It also does not include any documents that the Special Master’s counsel may have downloaded or printed from the electronic document review application in the underlying litigation, to which the Master was provided access.

<sup>2</sup> The Master and Customer Class Counsel also engaged in extensive expert discovery.

In his May 14, 2018 Motion to Seal Final Report and Recommendations, the Master stated that he intended to file “the complete record of evidence compiled in this case” – which Customer Class Counsel considered to be more expansive than the “complete record of the evidence concerning his recommended findings of fact and conclusions of law” ordered by the Court. *Compare* ECF 173 and ECF 216 *with* ECF 219. Accordingly, Customer Class Counsel filed their Motion for Clarification or Modification of the Court’s Orders on May 15, 2018 (ECF 222).

On May 16, 2018, Customer Class Counsel received the Master’s Report. The next day, the Court issued its May 17, 2018 Memorandum and Order (ECF 226). In accordance with that Order, counsel for Labaton conferred with (among others) William Sinnott, counsel for the Special Master, regarding the Special Master’s views on Customer Class Counsel’s Motion for Clarification or Modification (ECF 222). Late in the day on Tuesday, May 22, Mr. Sinnott responded:

The Special Master is bound by the Court’s orders in this case, and, therefore, cannot support a position that conflicts with the mandate of the Court. The Special Master, thus, defers to the Court’s 3/8/17 Order (providing that “The Masters 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”) and its 3/1/18 Order reaffirming that a full record is required (“The complete record of the evidence concerning the Master’s recommended findings of fact and conclusion of law must also be filed.”) See also Fed. R. Civ. P. 53(b)(2)(C) and 2003 Advisory Committee Notes (“A basic requirement [] is that the master must make and file a complete record of the evidence considered in making or recommending findings of fact on the basis of evidence.”).<sup>3</sup>

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<sup>3</sup> See also Special Master’s Report on Customer Class Counsels’ Motion for Clarification or Modification of the Court’s March 8, 2017 and March 1, 2018 Orders to Eliminate the Requirement for the Master to File All Documents Produced in Discovery With The Court (ECF No. 231), which further articulates the Master’s position.

Thus, the Master appears not only to view the Court's Orders as requiring that the entire discovery record produced in this case be filed; he now is advocating in favor of such a position purportedly based on Federal Rule of Civil Procedure 53. With all due respect to the Master, this position is incorrect, as explained below.

### **ARGUMENT**

#### **I. The Master is Not Required to File the Entire Discovery Record.**

Rule 53 does not mandate that the Master file the entire discovery record. Instead, it leaves that decision to the Court, providing that the appointing order must state "the nature of the materials to be preserved and filed as the record of the master's activities." Fed. R. Civ. P. 53(b)(2)(C). The 2003 Advisory Notes elaborate on this directive:

A basic requirement, however, is that the master must make and file a complete record of the evidence considered in making or recommending findings of fact on the basis of evidence. The order of appointment should routinely include this requirement unless the nature of the appointment precludes any prospect that the master will make or recommend evidence-based findings of fact.

Fed. R. Civ. P. 53, 2003 Advisory Notes. Importantly, the 2003 Advisory Notes also state that, although discovery materials could be filed directly with the Court pursuant to the then-existing Fed. R. Civ. P. 5(e), "in many circumstances filing with the court may be inappropriate. Confidentiality is important with respect to many materials that may properly be considered by a master. Materials in the record can be transmitted to the court, and filed, in connection with review of a master's order, report, or recommendations." *Id.* Of course, the Court "may direct filing of any materials that it wishes to make part of the public record," but such filing is not required under the Rule. *See id.*

The Court's orders directing the Master to file the "complete record of the evidence concerning his recommended findings of fact and any conclusions of law" is consistent with this framework. ECF 173; ECF 216. The Master's broad interpretation and expansion of those



orders, on the other hand, run counter to First Circuit practice. A survey of cases in this circuit in which special masters were appointed demonstrates that it is at least unusual for a master, after filing a report, to file the entire discovery record produced in the course of his or her duties. *See, e.g., Abraca Health LLC et al. v. PharmPix Corp. et al.*, 3:11-cv-01218 (D. P.R. January 13, 2013) (ECF 185, 189) (appointing order provided that “[t]he final report shall be the only record of the Master’s activities in the Court’s docket.”); *Prof’l Market v. AC Nielsen Corp., et al.*, 3:03-cv-02314 (D. P.R. Oct. 7, 2008) (ECF 137) (appointing order contains same language).<sup>4</sup> Instead, it appears that a typical practice is for the special master to preserve a fuller record generated during his or her duties, but not to file the entire record automatically.

Here, the Master has preserved the discovery record. This preservation will allow him, the parties, and the Court to supplement the Court record, to the extent they deem necessary, pursuant to the procedure proposed by Customer Class Counsel. Wright and Miller recommend a similar approach:

The report should include all the portions of the record preserved under Rule 53(b)(2)(c) that the master deems relevant. The parties may designate additional materials from the record and may ask the court to supplement the record with evidence; the court may also direct that additional materials from the record be provided and filed.

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<sup>4</sup> A non-exhaustive search within the First Circuit has uncovered numerous additional examples in which the special master did not file the entire record generated during the course of his or her duties. *See Mass. Inst. of Tech. v. Still River Sys., Inc.*, 10-cv-12186 (D. Mass. July 8, 2011) (ECF 22); *Commonwealth of Mass. et al. v. E\*Trade Access, Inc., et al.*, 03-cv-11206 (D. Mass. May 22, 2013) (ECF 351); *DBH Kaplan v. First Hartford Corp., et al.*, 05-cv-00144 (D. Me. June 16, 2009) (ECF 209); *Maine People’s Alliance, et al. v. Holtranchem MFG Co., et al.*, 00-cv-00069 (D. Me. July 1, 2004); *In re: Mortgage Foreclosure Master Docket*, 1:11-mc-00088 (D. RI. 2011) (ECF 156); *In re: Volkswagen and Audi Warranty Extension Litig.*, 07-md-01790 (D. Mass. Oct. 23, 2008) (ECF 122); *In re: Webloyalty.com, Inc., Mktg. and Sales Practices Litig.*, 07-md-01820 (D. Mass. June 18, 2007) (ECF 52); *In Re: Tyco Sec. Litig., et al.*, 02-md-01335 (D. N.H. June 24, 2010) (ECF 1671); *Consejo de Salud Playa Ponce v. Gonzalez Feliciano*, 3:06-cv-01260 (D. P.R. May 13, 2009) (ECF 260; ECF 321); *U.S. Fidelity v. Gabriel Fuentes Cons, et al.*, 3:03-cv-01903 (D. P.R. Aug. 30, 2005) (ECF 724). On the other hand, Counsel’s research did not locate any recent case within the First Circuit in which the entire discovery record generated by a master was required to be filed.

9C Wright & Miller, *Federal Practice and Procedure*, § 2611 at 621 (3d ed. 2008). This, of course, is consistent with the Rules of Civil Procedure more generally, which provide that discovery materials not actually used in connection with a motion or Court proceeding are not to be filed. *See, e.g.*, Fed. R. Civ. P. 5(d)(1); D. Mass. Local Rule 26.6(a).

If the Master believes that other parts of the discovery record are relevant to his Report, beyond the 9,559 pages that he has already selected, he should identify those materials and file them. However, his stated approach – filing the entire record – is not required by the Rules, departs from the apparent practice of this Circuit, and conflicts with the procedure suggested by relevant authorities. Respectfully, the Court should clarify its orders to adopt Customer Class Counsel’s reasonable proposal, which allows the Master and all parties to include such portions of the record as they may deem of import to the *de novo* review, and permits the Court to order supplementation of the record as it deems appropriate.

## **II. Filing the Entire Discovery Record Would Conflict With Rule 53(a)(3).**

Rule 53(a)(3) provides that in “appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.” Fed. R. Civ. P. 53(a)(3). Customer Class Counsel have already paid \$3.8 million to fund the Special Master’s work, in addition to incurring significant legal fees and spending substantial time responding to the investigation.

Filing the entire discovery record, and the attendant redaction process, would be costly for the firms and would unnecessarily drain judicial resources. Merely submitting the discovery record to the Court appears expensive and unwieldy, demonstrating how atypical the process would be. *See* May 16, 2018 Order (ECF 223) at n. 1 (“The Master has informed the court that it will take several more weeks to compile the record for filing. In addition, it has not yet been determined whether it is feasible and cost-effective to have the record converted into a

searchable electronic form as previously ordered.”). Moreover, this difficulty in merely *filing* the discovery record portends the burdensome and expensive work that will follow: several law firms poring through voluminous discovery that is replete with privileged communications, work product, confidential personal information, and commercially sensitive material. The cost of that process alone will be massive. Then, inevitably, disagreements will arise over proposed redactions within those tens of thousands of pages. This undertaking will consume a substantial amount of the firms’, the Court’s, and perhaps the Master’s time.

In addition, each party’s law firm will have the right to file under seal its own proposed redactions of the 234,000+ pages, presumably in hard copy, which will result in burdening the Court with a truck-load of bankers’ boxes, and the obligation to go through each in order to rule upon the requested redactions. Were the Court to choose to shift this review responsibility to the Master, the Court would simultaneously be shifting a huge expense as well.<sup>5</sup>

It would indeed be unusual to embark upon this process merely to enable the filing of those documents that the Master and the parties have decided are *not* necessary for determination of the issues presented.<sup>6</sup> It is difficult to see the benefit in this exercise. The costs are obvious and materially outweigh any minimal value gained from filing the documents upon which neither the Master nor the parties rely. Under the circumstances, this simply would not constitute a reasonable expense. *See* Fed. R. Civ. P. 53(a)(3).

**III. There Is No Countervailing Reason to File the Discovery Materials Because They Are Not Judicial Records, and the Public Has No Presumptive Right of Access to Them.**

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<sup>5</sup> Customer Class Counsel respectfully continue to preserve their rights with regard to an accounting regarding, and potential objection to, the amounts that they have been required to fund.

<sup>6</sup> As stated in Customer Class Counsel’s Motion, much of the document production is wholly irrelevant to the Master’s Report and Recommendations.

The record that the Master seeks to file consists of typical discovery materials, produced in response to requests for the production of documents, interrogatories, and deposition questions, pursuant to a Limited Protective Order entered by this Court. ECF 191.<sup>7</sup> There is no public interest that militates in favor of filing the entire discovery record. The Supreme Court has explained that “pretrial depositions and interrogatories are not public components of a civil trial. Such proceedings were not open to the public at common law, and, in general, they are conducted in private as a matter of modern practice.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33 (1984). As such, “the courts of appeals have uniformly held that the public has no common law or constitutional right of access to materials that are gained through civil discovery but neither introduced as evidence at trial nor submitted to the court as documentation in support of motions or trial papers.” *United States v. Kravetz*, 706 F.3d 47, 55 (1st Cir. 2013); *see also*, *e.g.*, *Anderson v. Cryovac*, 805 F.2d 1, 13 (1st Cir. 1986) (holding that there is no common law right to inspect discovery documents because “[t]here is no tradition of public access to discovery, and requiring a trial court to scrutinize carefully public claims of access would be incongruous with the goals of the discovery process.”).

Instead, whether there is a public right of access to materials “turn[s] on whether the documents that are sought constitute ‘judicial records’” – i.e., whether the Court relies on the materials “in determining the litigants’ substantive rights.” *Kravetz*, 706 F.3d at 54. The key inquiry is whether the documents are relevant to the Court’s decisionmaking. *Id.* at 58-59, n. 9

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<sup>7</sup> The Protective Order makes clear that discovery was a private process before the Master, rather than the preparation of an all-encompassing filing for public consumption: “[d]ocuments and information produced in these proceedings [before the Master] may be used only in connection with these proceedings, and may not be otherwise used or disseminated.” ECF 191 at ¶ 2. Tellingly, the Protective Order also contemplates that only some of the record would be filed: “such proceedings shall be private; provided, however, that the transcripts thereof (*or excerpts*) shall be filed in Court with the Special Master’s Report and Recommendation . . .” *Id.* at ¶ 4 (emphasis added).

(“We do not hold that an irrelevant document, that neither was nor should have been relied on, is nevertheless a judicial document and thus necessarily presumptively subject to disclosure.”); *see also FTC v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 408 (1st Cir. 1987) (“Those documents which play no role in the adjudication process . . . such as those used only in discovery, lie beyond reach.”). Therefore, while the documents relied upon by the Court, the Master, and the parties may be judicial records, the balance of the discovery materials are not. Accordingly, there is no presumptive right of access to these documents, and there is no reason for filing them that outweighs the attendant burdens.

### CONCLUSION

For the foregoing reasons, and the reasons stated in Customer Class Counsel’s Motion (ECF 222), Customer Class Counsel respectfully request that the Court clarify or modify its March 8, 2017 Order, (Docket No. 173 at ¶ 11), as reiterated in its March 1, 2018 Order (Docket No. 216 at p. 2), to limit the filing of the documents produced in discovery to (a) the exhibits to the Special Master’s Report, (b) such additional documents as the Master may wish to add, (c) such additional documents as any party wishes to file in the *de novo* review period, and (d) any other documents that the Court requests.

Dated: May 25, 2018

Respectfully submitted,

By: /s/ Joan A. Lukey

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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 25, 2018

With regard to the May 24, 2018 Moving Parties' Motion to Set  
Revised Schedule for Requested Redactions and the Unsealing of the

Special Master's Report and Recommendation (Docket No. 229) (the "Motion"), it is hereby ORDERED that:

1. As agreed by the parties, counsel for the Special Master shall provide the Report and Recommendations, Executive Summary, and exhibits to counsel for State Street Bank and Trust Company ("State Street") forthwith subject to the following conditions: Counsel for State Street at WilmerHale, LLP shall maintain these materials on an "attorneys' eyes only" basis, and shall not share the documents or the contents thereof with their client. The provision of these documents shall not constitute a waiver of the attorney-client privilege, work product, or any other privilege or protection.

2. The deadline for responding to the May 16, 2018 Memorandum and Order concerning proposed redactions (Docket No. 223) is extended to June 5, 2018, without prejudice to a possible further extension to June 11, 2018, as requested in the Motion.


3. A hearing on the Motion shall be held on May 30, 2018, at 2:00 p.m. Counsel for the Special Master shall attend.

In addition, George Hopkins, Executive Director of Arkansas Teacher Retirement System ("ATRS"), and anyone else required to act for ATRS in this case shall attend. The Master's Report and Recommendations (Docket No. 224 under seal), including pages 89 to 124 and 368 to 371, and Executive Summary (Docket No. 224-1 under seal), including pages 25 to 29 and 50 to 51, raise questions



concerning: whether ATRS properly discharged its duties as Lead Plaintiff, see, e.g., Garbowski v. Tokai Pharma., Inc., 2018 WL 1370522 (D. Mass. 2018) (Wolf, D.J.); whether ATRS should be replaced as Lead Plaintiff; whether there is now a conflict between the interests of Customer Class Counsel<sup>1</sup> and the class; and whether new class counsel should be appointed to provide independent advice to the class whether or not ATRS continues as Lead Plaintiff. Mr. Hopkins and any other representatives of ATRS shall be prepared to discuss these issues at the May 30, 2018 hearing.

4. The responses to the May 17, 2018 Order concerning Customer Class Counsel's Motion for Clarification (Docket No. 226) regarding the record to be filed by the Master shall also be addressed at the May 30, 2018 hearing.

  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Labaton Sucharow, LLP, Thornton Law Firm, and Lief, Cabraser, Heimann, and Bernstein, LLP.