

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated,)	C.A. No. 11-10230-MLW
)	
)	
Plaintiffs,)	
)	
v.)	
)	
State Street Bank and Trust Company,)	
)	
Defendants.)	
)	
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ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, and those similarly situated,)	C.A. No. 11-12049-MLW
)	
)	
Plaintiff,)	
)	
v.)	
)	
State Street Bank and Trust Company,)	
)	
Defendants.)	
)	
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THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, on behalf of itself, and JAMES PEHOUSHEK-STANGELAND, and all others similarly situated,)	C.A. No. 12-11698-MLW
)	
)	
Plaintiff,)	
)	
v.)	
)	
State Street Bank and Trust Company,)	
)	
Defendants.)	
)	
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MCTIGUE LAW LLP’S AND THE HENRIQUEZ ERISA PLAINTIFFS’ MOTION FOR REDACTIONS FROM SPECIAL MASTER’S REPORT AND RECOMMENDATION, EXECUTIVE SUMMARY, AND EXHIBITS

MOTION

Pursuant to this Court’s May 31, 2018 Order, ¶4 (Dkt. No. 237) McTigue Law LLP — one of the ERISA counsel in this case representing named Plaintiffs Arnold Henriquez, Michael T. Cohn, William R. Taylor, and Richard A. Sutherland (the “Henriquez ERISA Plaintiffs”) — and the Henriquez ERISA Plaintiffs request redactions from the Special Master’s May 14, 2018 Report and Recommendation, the executive summary thereof, and the exhibits thereto (“Special Master Materials”) before they are entered on the public record as set forth in the attached Exhibit A. Exhibit A contains pages from the Special Master Materials from which redactions are sought, with the specific redactions indicated by black boxes.

Pursuant to ¶4 of the aforementioned Order, Exhibit A is being filed under seal. That same paragraph directs us to “state the reasons for any objection to [our] submissions being unsealed.” McTigue Law LLP has no objections to this Exhibit being unsealed since it already reflects the redactions we request. However, it is certainly conceivable that this Exhibit contains, in unredacted form, text that other parties may request to be redacted, and so other parties may have objections to the Exhibit being unsealed.¹

Pursuant to L.R. 7.1(a)(2) and ¶8 of the Court’s Order (Dkt. No. 237), we certify that we have conferred with counsel for Defendant State Street, counsel for the “customer class,” counsel for the Special Master, and other ERISA counsel prior to filing this motion. **No party or counsel has indicated opposition to the proposed redactions.** Counsel for the Thornton Law Firm has indicated they take no position on this motion. Counsel for the Special Master has indicated they defer a response until June 18, when, pursuant to ¶6 of the Court’s May 31, 2018

¹ McTigue Law LLP interpreted ¶4 to be asking only the filer to state the reasons for any objections the filer had to having its submission unsealed — not to be asking the filer to confer with other counsel on whether other counsel or parties had objections to unsealing.

order, they will file their comments on all the proposed redactions. Other counsel did not respond to the email request for conferral in time to be included in this response.

MEMORANDUM IN SUPPORT OF MOTION

As have other counsel in this case, McTigue Law LLP has already filed a motion, with supporting memorandum, identifying categories of information they seek to have redacted from the Special Master Materials. (*See* Dkt. No. 248). Those documents are incorporated herein by reference. In that motion, which was unopposed, McTigue Law LLP sought redaction of five categories of information:

1. Confidential medical, financial, and personal identifying information of the Henriquez ERISA Plaintiffs or any other clients of their counsel
2. Attorney-client communications for which the Henriquez ERISA Plaintiffs' counsel were a party
3. Attorney work product of the Henriquez ERISA Plaintiffs' counsel
4. Discussions of confidential settlement and mediation communications or strategy by Henriquez ERISA Plaintiffs' counsel
5. Proprietary information of the Henriquez ERISA Plaintiffs' counsel regarding law firm business development

The attached Exhibit A identifies the specific redactions within these categories that McTigue Law LLP is requesting. The redactions are from the following documents:

(a) The Special Master's Report and Recommendation ("SMRR"): 3 extremely minor redactions of immaterial descriptions of two of the named plaintiffs are requested; these redactions are requested to protect their privacy.

(b) Exhibit 11 to the SMRR (first deposition of attorney J. Brian McTigue): Attorney McTigue is the founding member of McTigue Law LLP. Redactions are made to protect proprietary discussions of the firm's case and client development strategies, descriptions of attorney-client communications, and attorney work product. The last includes discussions of the strengths and

weaknesses of this case and interactions with U.S. DOL (who in effect partly operated as co-counsel with plaintiffs counsel in litigating the case). Disclosing these publicly could prejudice the firm's litigation of other related cases.

(c) Exhibit 32 to the SMRR (deposition transcript of named Plaintiff Arnold Henriquez): a single redaction of personal identifying information is requested.

(d) Exhibit 33 to the SMRR (deposition transcript of named Plaintiff Michael J. Cohn): a few minor redactions to protect personal privacy and one redaction of attorney-client communications.

(e) Exhibit 34 to the SMRR (deposition transcript of named Plaintiff William R. Taylor): a few minor redactions to protect personal privacy and one redaction of attorney-client communications.

(f) Exhibit 159 to the SMRR (second deposition of attorney J. Brian McTigue): Redactions are made to protect attorney work product.

(g) Exhibit 265 to the SMRR (detailed billing records of McTigue Law LLP for the case): All descriptions of work performed have been redacted. For the rationale see the motion in which McTigue Law LLP has joined: Dkt. No. 249.

By: /s/ James A. Moore
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J. Brian McTigue (*pro hac vice*)
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*Local Counsel for the Henriquez ERISA
Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that the forgoing document was filed through the ECF System on June 11, 2018 and accordingly will be served electronically upon all attorneys of record.

/s/ James A. Moore

Exhibit A

Filed Under Seal

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

Plaintiff,

vs.

No. 11-cv-10230-MLW
**Leave to File Under Seal
Requested 6/11/2018**

STATE STREET BANK AND TRUST COMPANY,

Defendant.

_____ /

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

Plaintiffs,

vs.

No. 11-cv-12049-MLW

STATE STREET BANK AND TRUST COMPANY,

Defendant.

_____ /

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

Plaintiffs,

vs.

No. 12-cv-11698-MLW

STATE STREET BANK AND TRUST COMPANY,

Defendant.

_____ /

**SPECIAL MASTER'S MOTION TO SEAL SPECIAL MASTER'S
MOTION (UNDER SEAL) SEEKING COURT GUIDANCE**

Pursuant to Local Rule 7.2, and as provided for in paragraphs 7 and 11 of the Court's March 8, 2017 Order, the Special Master hereby moves this Honorable Court to permit the Special Master's Motion Seeking Court Guidance, to be filed under seal until further Court order.

WHEREFORE, Special Master respectfully requests that the Court permit the Motion be filed under seal.

Dated: June 11, 2018

Respectfully submitted,

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

By his attorneys,

/s/ William F. Sinnott

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

I hereby certify that this Notice of Appearance was filed electronically on June 11, 2018 and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing (“NEF”). Paper copies were sent to any person identified in the NEF as a non-registered participant.

/s/ William F. Sinnott
William F. Sinnott

**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

**LABATON SUCHAROW LLP'S
EMERGENCY MOTION TO SUPPLEMENT ITS PROPOSED
REDACTIONS TO THE MASTER'S SUBMISSION
WHEN THE CLERK'S OFFICE RE-OPENS ON JUNE 12, 2018**

Pursuant to Federal Rule of Civil Procedure 7(b) and Local Rule 7.1, Labaton Sucharow LLP (“Labaton”) respectfully moves on an emergency basis to supplement, on June 12, 2018, the proposed redactions to the Special Master’s Report and Recommendations, Executive Summary, and exhibits (collectively, the “Master’s Submission”) that Labaton filed on June 11, 2018. In support of this motion, counsel states as follows:

1. On May 16, 2018, this Court issued an Order confirming that the Master’s Submission is currently under seal in its entirety, and set forth a process by which the parties may seek redactions so that a public version could be unsealed. ECF 223.
2. On May 31, 2018, this Court issued an order requiring that the parties file motions setting forth the categories of information they seek to redact no later than June 5, 2018. ECF 237, ¶ 2. The order went on to require that “Counsel for plaintiff class and for State Street shall, by June 11, 2018, each file, under seal, their proposed redactions to the [Master’s Submission], and state the reasons for any objection to their submissions being unsealed.” *Id.* ¶ 4.
3. Labaton’s counsel and its staff worked diligently to prepare Labaton’s proposed redactions to the Master’s Submission and filed the majority of the proposed redactions, along with the reasons for any objection to the submissions being unsealed, with the Court today.
4. Unfortunately, counsel’s staff encountered significant, unexpected technical difficulties in the final steps of preparing the redacted versions, which temporarily prevented these documents from being finalized and burned onto a DVD in time for delivery to the Court. Because the documents were required to be physically delivered to the Court by 5:00 PM (when the clerk’s office closes), time simply ran out before the technical issues were fully resolved. As a result, although the redacted Report and Recommendations, Executive Summary, and sixty-eight (68) exhibits were included on the DVD filed today with the Court, there are twelve (12)

additional exhibits on which counsel had selected redactions that were not finalized in time to be included.

5. More specifically, in addition to the proposed redactions filed today, Labaton also wishes to request redactions with respect to Exhibits 80, 83, 105, 115, 117, 122, 125, 127, 139, 159, 162 and 198 to the Special Master's Report and Recommendations.

6. Labaton served redacted copies of these twelve documents on all counsel, including counsel for the Special Master, at approximately 6:03 PM this evening. Because the clerk's office was closed, however, Labaton could not file them today with the Court.

7. Accordingly, Labaton respectfully requests leave from the Court's May 31, 2018 Order, Paragraph 4, to supplement its proposed redactions. Labaton has prepared, for filing under seal at the beginning of business on June 12, 2018, a replacement or corrected DVD that contains both the redacted documents that were included in the June 11 submission (included again for convenience), and the additional twelve (12) exhibits reflecting redactions that Labaton requests.

8. The supplementation of these additional twelve (12) redacted exhibits will not impact preparation of the combined version of the Master's Submission, which Labaton is preparing pursuant to Paragraph 5 of the Court's May 31, 2018 Order.

9. Labaton has contacted other counsel and counsel for the Special Master regarding the substance of this motion. Lief Cabraser Heimann & Bernstein LLP, the Thornton Law Firm, McTigue Law LLP, State Street, and the Special Master (through counsel) have all responded that they do not oppose the relief requested herein. As of the time of this filing, Keller Rohrback L.L.P. and Zuckerman Spaeder LLP have not yet responded.

WHEREFORE, Labaton respectfully requests that the Court permit Labaton to supplement its proposed redactions to the exhibits to the Special Master's Report and Recommendations by filing a replacement DVD that contains a corrected, complete set of Labaton's proposed redactions to the Master's Submission.

Dated: June 11, 2018

Respectfully submitted,

By: /s/ Justin J. Wolosz

Joan A. Lukey (BBO No. 307340)
Justin J. Wolosz (BBO No. 643543)
Stuart M. Glass (BBO No. 641466)
CHOATE, HALL & STEWART LLP
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Tel.: (617) 248-5000
Fax: (617) 248-4000

Counsel for Labaton Sucharow LLP

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

Labaton's counsel contacted other counsel and counsel for the Special Master regarding the substance of this motion. Lieff Cabraser Heimann & Bernstein LLP, the Thornton Law Firm, McTigue Law LLP, State Street, and the Special Master (through counsel) have all responded that they do not oppose the relief requested herein. As of the time of this filing, Keller Rohrback L.L.P. and Zuckerman Spaeder LLP have not yet responded.

/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 June 11, 2018.

/s/ Justin J. Wolosz
Justin J. Wolosz

**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

**[PROPOSED] ORDER GRANTING LABATON SUCHAROW LLP'S
EMERGENCY MOTION TO SUPPLEMENT ITS PROPOSED
REDACTIONS TO THE MASTER'S SUBMISSION
WHEN THE CLERK'S OFFICE RE-OPENS ON JUNE 12, 2018**

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

1. The deadline for Labaton Sucharow LLP to file its proposed redactions to the Special Master's Executive Summary, Report and Recommendations, and exhibits pursuant to Paragraph 4 of the Court's Order, ECF 237, is extended as follows.

2. Labaton Sucharow LLP may supplement its proposed redactions to the Special Master's Report and Recommendations by filing, on June 12, 2018, a corrected, replacement DVD containing proposed redactions to Exhibits 80, 83, 105, 115, 117, 122, 125, 127, 139, 159, 162, and 198 to the Special Master's Report and Recommendations.

IT IS SO ORDERED.

Dated: _____, 2018

HONORABLE 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,

No. 11-cv-10230-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

_____ /

ARNOLD HENRIQUEZ, MICHAEL T. COHN,
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THE ANDOVER COMPANIES EMPLOYEE
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Plaintiffs,

No. 12-cv-11698-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

_____ /

**SPECIAL MASTER'S MOTION TO SEAL SPECIAL MASTER'S RESPONSE
TO THE LAW FIRMS' VARIOUS MOTIONS CONCERNING PROPOSED
CATEGORIES FOR REDACTION**

Pursuant to Local Rule 7.2, and as provided for in paragraphs 7 and 11 of the Court's March 8, 2017 Order, the Special Master hereby moves this Honorable Court to permit the Special Master's Motion Seeking Court Guidance, to be filed under seal until further Court order.

WHEREFORE, Special Master respectfully requests that the Court permit the Motion be filed under seal.

Dated: June 12, 2018

Respectfully submitted,

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

By his attorneys,

/s/ William F. Sinnott
William F. Sinnott (BBO #547423)
Elizabeth J. McEvoy (BBO #683191)
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Email: wsinnott@barrettsingal.com
Email: emcevoy@barrettsingal.com

CERTIFICATE OF SERVICE

I hereby certify that this Notice of Appearance was filed electronically on June 12, 2018 and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing (“NEF”). Paper copies were sent to any person identified in the NEF as a non-registered participant.

/s/ William F. Sinnott
William F. Sinnott

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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THE ANDOVER COMPANIES EMPLOYEES SAVINGS)
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v.)
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STATE STREET BANK AND TRUST COMPANY,)
)
Defendant.)
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NOTICE OF WITHDRAW AS COUNSEL

PURSUANT TO Local Rule 83.5.2(c), please enter my withdrawal as counsel for Lead Plaintiff Arkansas Teacher Retirement System as I will no longer be associated with Labaton Sucharow LLP after my retirement from the practice of law on June 30, 2018.

Dated: June 12, 2018

Respectfully submitted,

By: /s/ Joel H. Bernstein

Joel H. Bernstein (*pro hac vice*)

Labaton Sucharow LLP

140 Broadway

New York, New York 10005

Counsel for Arkansas Teacher Retirement System

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2018, I caused the foregoing Notice of Withdrawal to be filed through the ECF system in the 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/ Joel H. Bernstein

Joel H. Bernstein