UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiffs, 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, Plaintiffs, 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, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 12-cv-11698 MLW

NOTICE OF ALL PARTIES' AVAILABILITY FOR HEARINGS

In light of the Court's comments at the November 7, 2018 hearing that the Court may hold hearings on this matter in January, undersigned counsel respectfully informs the Court that all counsel (Lieff Cabraser, Choate Hall & Stewart, counsel for the Special Master, Keller Rohrback, McTigue Law, Zuckerman Spaeder, WilmerHale, and the Competitive Enterprise Institute) have conferred regarding the parties' availability. Assuming the dates work with the Court's schedule, all parties are available to appear January 17 and 18. All parties are also available to appear January 28, 29, 30, and 31, with the possible exception of Zuckerman Spaeder. Zuckerman Spaeder may be available for part of the week of January 28th and will know its availability at a later date.

Respectfully submitted,

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Dated: November 19, 2018

Counsel for the Thornton Law Firm LLP

CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically on November 19, 2018 and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing ("NEF").

/s/ Joshua C. Sharp
Joshua C. Sharp

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THE COMPETITIVE ENTERPRISE INSTITUTE'S
CENTER FOR CLASS ACTION FAIRNESS'S MEMORANDUM
PROPOUNDING AN APPROPRIATE TOTAL FEE AWARD

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As invited by the Court (Dkt. 518), the Competitive Enterprise Institute's Center for Class Action Fairness ("CCAF") files this memorandum addressing the reasonableness of the $74,541,250 attorneys' fee award that the Special Master uses as a baseline for his Report and Recommendations ("Report," Dkt. 357) and the Proposed Partial Resolution of Issues for the Court's Consideration ("Proposed Resolution," Dkt. 485) with respect to Labaton Sucharow LLP ("Labaton").

CCAF recommends instead using a baseline fee award of $50 million (approximately 16.75% of the $300 million gross settlement fund less administrative and litigation expenses). The Court should calculate a proportionate baseline fee award for each law firm based on a corrected lodestar that more accurately values the time of contract and staff attorneys. From this baseline, the Special Master's recommended sanctions should be applied and the costs of the investigation can be taxed equitably on the firms in proportion to their responsibility for the costs.

EXECUTIVE SUMMARY

Before deciding sanctions and costs, the Court should determine a baseline attorneys' fee award that would have not been unreasonable in the absence of misconduct and error.

Appropriate aggregate fees in this case would be substantially lower than the 24.85% award that the Court approved in its now-vacated order. Dkt. 111. The award was based in part on Class Counsel's misrepresentation that a nearly 25% award was "right in line with Professor Fitzpatrick's findings." Dkt. 103-1 at 10-11 (citing Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. EMPIRICAL LEGAL STUD. 811 (2010) ("Fitzpatrick"), filed at Dkt. 104-31). Class Counsel brazenly failed to tell the Court that "[f]ee percentages were strongly and inversely associated with the size of the settlement." *Id.* at 811. Thus, while attorneys' fees are about 25% on average of *all* class action settlements, "fee percentages tended to drift lower at a fairly slow pace until a settlement size of $100 million was reached, at which point the fee percentages plunged well below 20 percent." *Id.* at 838. Larger common funds produce smaller percentage fee awards because the

effort required to obtain a $100 million settlement is nearly always substantially less than one hundred times the effort to obtain a $1 million settlement. Economies of scale should benefit class members, not merely class counsel. Fitzpatrick actually shows that the mean fee award in a settlement of $250 million to $500 million is 17.8%. *Id.* at 839.

Here, any award more than 17% of the net common fund, or about $50 million, at most, would be unreasonable. Such fee will return over $24 million to class members, before assessing the Special Master's recommendations for sanctions, which should be applied to this corrected baseline.

The reasonableness of an award is confirmed through a lodestar crosscheck. The crosscheck should take into account the market rates of contract and staff attorneys. Using very generous rates, a maximum corrected lodestar figure is about $27.4 million, so a $50 million fee award represents a lodestar multiplier of about 1.82. Such a lodestar multiplier more than adequately compensates class counsel for the results in this case; indeed, Class Counsel themselves argued that multiplier is appropriate.

A 1.82 multiplier is, in fact, too generous because the vast majority of hours were billed in this case after the case was stayed for mediation and after an agreement-in-principle was reached in *In re Bank of New York Mellon FOREX Transactions Litigation* ("*BONY Mellon*"), which Class Counsel describes as the "template" for this settlement. Dkt. 401-9 (Chiplock Depo.) at 110. There was little risk of non-payment to counsel after the case entered mediation. Lodestar multipliers are intended to compensate for risk, and Class Counsel had none when they cynically ramped up their document review in the first half of 2015 to a platoon of over 30 attorneys frantically churning on the eve of settlement (and a bit after). The multiplier also compares very generously to other cases, notably the *BONY Mellon* itself, where the defendant engaged in scorched earth tactics and counsel very well could have walked away empty-handed from a pugilistic litigant. Even though *BONY Mellon* involved many of the same firms and attorneys, the lodestar in that case was only $15 million more than this case,

even though 110 depositions were taken, and only a 1.6 multiplier was awarded by that court. This case was dramatically less risky and less efficiently litigated that *BONY Mellon*.

Finally, given the conduct the Special Master has uncovered, and in view of the oversized fee request and lodestar submitted by Class Counsel, it will not be enough to reduce class counsel's fee request to 16.75% of the megafund. Instead, CCAF recommends apportioning the fee award to each law firm, and then taxing costs and imposing sanctions on those firms in proportion to their conduct in this case.

I. Research shows a settlement of $300 million generally merits about 10-18% attorneys' fees.

A $300 million settlement is a megafund, and courts typically award less than 20% of the fund as fees in mega-fund cases of this size. Several studies independently confirm that the appropriate rate for a settlement over $250 million is less than 20% of the net fund (that is, the gross fund minus expenses). Here, an appropriate fee award for all counsel totals approximately 17% of the net common fund, or $50 million.

A. Attorneys' fees for megafunds tend to be awarded on a sliding scale so that counsel does not reap a windfall from valuable client claims.

Attorneys who achieve a valuable benefit for others should be paid due to "the equitable principle that those who have profited from litigation should share its costs." *In re Thirteen Appeals Arising Out of the San Juan DuPont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305 n.6 (1st Cir. 1995). Amicus agrees that attorneys' fees awarded as a percentage of the common fund may be reasonable and such awards have "distinct advantages" over lodestar awards. *Id.* at 307. However, there is nothing equitable about awarding attorneys a windfall due to the intrinsic value of the claims, especially when the high settlement value hinged on the success of other litigation, for which attorneys have already been generously compensated.

Because of economies of scale, a reasonable fee award tends to be a smaller percentage in larger settlements to prevent a windfall for plaintiffs' attorneys at the expense of the class. "It is generally not 150 times more difficult to prepare, try and settle a $150 million case than it is to try a $1 million case." *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 486 (S.D.N.Y. 1998). Thus, "[i]n cases with exceptionally large common funds, courts often account for these economies of scale by awarding fees in the lower range." *In re Citigroup Inc. Bond Litig.,* 988 F. Supp. 2d 371, 374 (S.D.N.Y. 2013) (cleaned up). "The existence of a scaling effect—the fee percent decreases as class recovery increases—is central to justifying aggregate litigation such as class actions. Plaintiffs' ability to aggregate into classes that reduce the percentage of recovery devoted to fees should be a hallmark of a well-functioning class action system." Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993–2008*, 7 J. EMPIRICAL LEGAL STUD. 248, 263 (2010).

But why should someone who provides $300 million to class members not get three hundred times as much as someone who provides $1 million? Basically, a flat percentage fee award on every dollar would allow class counsel (and not the class) to reap the efficiency awards of the class action mechanism. "In many instances the increase is merely a factor of the size of the class and has no direct relationship to the efforts of counsel." *NASDAQ Market-Makers*, 187 F.R.D. at 486 (quoting *In re First Fidelity Secs. Litig.*, 750 F. Supp. 160, 164 n.1 (D.N.J. 1990)). Thus, "in 'mega-cases' in which large settlements or awards serve as the basis for calculating a percentage, courts have often found considerably lower percentages of recovery [than 25%] to be appropriate." Federal Judicial Center, MANUAL FOR COMPLEX LITIGATION (FOURTH) ("MCL") §14.121 at 188.

Empirical research shows that in class actions "fee percentages tended to drift lower at a fairly slow pace until a settlement size of $100 million was reached, at which point the fee percentages plunged well below 20 percent." Fitzpatrick (Dkt. 104-31), at 835. Prof. Fitzpatrick—whose data Class Counsel misrepresented as supporting their 25% fee request—conducted a comprehensive survey of

all class action settlements in 2006 and 2007, a total of 668 cases. *Id.* at 811. Fitzpatrick found that percentage awards tend to decrease with the size of settlement, and for settlements between $250 and $500 million, the mean fee is 17.8%. *Id.* at 839.

A broad review of cases from 1993-2008 found even lower percentages. *See* Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993–2008*, 7 J. EMPIRICAL LEGAL STUD. 248, 265 tbl. 7 (2010) (in cases over $175 million, a 12% mean and 10.2% median fee award). Earlier surveys reached similar conclusions. An earlier version of the Eisenberg & Miller study reported a 12% mean and 10.1% median in settlements over $190 million through 2002. Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study,* 1 J. Empirical Legal Stud. 27, 73 (2004). An empirical survey in 2003 showed average recovery of 15.1% where recovery exceeded $100 million Logan, Stuart, et al., *Attorney Fee Awards in Common Fund Class Actions*, 24 CLASS ACTION REPORTS (March-April 2003). "One court's survey of fee awards in class actions with recoveries exceeding $100 million found fee percentages ranging from 4.1% to 17.92%." MCL §14.121 at 188-189 (citing *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 339 (3d Cir. 1998)).

A more recent study of settlements from 2009 to 2013 breaks down fee percentages by only decile, so lumps the largest 10% of all settlements together, settlements above $67.5 million, and finds that the mean fee percentage of this broad range is 22.3%. Theodore Eisenberg, Geoffrey Miller, & Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. REV. 937, 948 (2017). The authors also conduct a regression of fees versus gross recovery, which predict the fee percentage for a $300 million fee award would be about 20%. *Id.* at 970.[1]

[1] The regression table shows that controlling for gross recovery, the base-ten logarithm (log) of the predicted fee = 0.94 x log (gross recovery) - 0.189. *Id.* If we look up log($300,000,000) on a slide rule or calculator, it is 8.477, and thus the log (fee) = (8.477 x 0.94) – 0.189 = 7.7795. The anti-

To date, Class Counsel has not acknowledged their misrepresentation of Fitzpatrick, nor have they shown that 25% would be a reasonable percentage for a settlement of this size.

B. Case law confirms an appropriate percentage in this case about 12-18%.

In their original fee motion, Class Counsel cherry-pick a handful of megafund cases that awarded more than 25%. Dkt. 103-1 at 7. These are unremarkable—CCAF expects that Class Counsel may generate an even larger cherry-picked list in response to this filing; with over 300 class action settlements a year approved in federal courts, there are certainly examples of counsel sliding excessive unopposed fee petitions by overburdened judges. "It does not take a statistical whiz" to realize "a non-random sample of five fee awards amounts to no more than looking over a crowd and picking outs one's friends." *In re IndyMac Mortgage-Backed Secs. Litig.*, 94 F. Supp. 3d 517, 523 (S.D.N.Y. 2015). "[A]lthough counsel's case citations are accurate, there are many others where the percentage fee awarded in settlements as large as this one is typically lower—often substantially lower—than 20%." *In re Citigroup Inc. Bond Litig.*, 988 F. Supp. 2d 371, 374 (S.D.N.Y. 2013). Moreover, in the megafund context, class counsel have the incentive and financial cushion to regularly support their petitions with a "bless-the-fee" expert declaration. *See, e.g., In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3960068, at *22 n.8 (N.D. Cal. Aug. 17, 2018) (describing "multiple shortcomings in Professor Rubenstein's calculation").

However, Class Counsel's expert inadvertently provides a solution to the cherry-picking problem. While counsel's expert Prof. Rubenstein has provided a report and two expert declarations, none of these argue that the *percentage* here is appropriate for a megafund, and instead they chiefly concern the supposedly-appropriate lodestar rates for contract/staff attorneys and the multiplier crosscheck used in this case. *See* Dkts. 368, 401-234, and 446-2 (collectively the "Rubenstein Reports").

log of this number (in formula: 10 ^ 7.7795) results in a predicted fee award of $60,185,781 or 20.06% of $300 million.

There is good reason for this—Prof. Rubenstein's own treatise, his opinion in another litigation, and the cases he relies here upon suggest a smaller aggregate percentage for a large fund like this one.

> Interestingly, empirical data on class action fee awards do demonstrate that the percentage awarded to counsel decreases as the size of the fund increases, though more along the lines of a sliding scale (smooth decrease) than a megafund (cliff-like decrease). [Recounts results of Fitzpatrick (2010) and Eisenberg & Miller (2010).] **Similarly, the author's own database, taken from a six-year sample, shows the average . . . for settlements over $44.625 million is 20.9%**.

Rubenstein, 5 NEWBERG ON CLASS ACTIONS § 15:81 (5th ed.) at 305. Opining as a fee expert in *Aranda v. Carribbean Cruise Line, Inc.*, Prof. Rubenstein acknowledged that "Seventh Circuit courts tend to award declining percentage as the size of the class's recovery increases." No. 12-cv-4069, 2017 WL 3642012, at *3 (N.D. Ill. Aug. 24, 2017).

Rubenstein's own citations here confirm that the vacated 25% fee award here was excessive. Because Rubenstein was not cherry-picking cases based on *percentage*, his citations provide a convenient unbiased sample of what other courts have awarded. Rubenstein lists 20 reported settlements he categorized as between $100 and $500 million. Dkt. 368, Ex. E. Of all of these cases—a sample that Class Counsel's own expert generated—attorneys were awarded more than 20% of a settlement fund greater than $100 million ***in just 2 of the cases***,[2] and the average fee award of these twenty cases was ***13.16%***. *See* Declaration of M. Frank Bednarz ("Bednarz Decl."), ¶ 12. Several of Rubenstein's citations show exactly the sort of scrutiny that the Court should apply here. *See*, *e.g.*, *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 130 (S.D.N.Y. 2009) (awarding 15.25% of $336 million fund rather than the requested 25.5%); *Pennsylvania Pub. Sch. Employees' Ret. System v. Bank of Am. Corp.*, 318 F.R.D.

[2] One cited case was not actually over $100 million, but instead established a $95 million fund. *See In re Lupron Mktg. and Sales Practices Litig.*, No. 01-CV-10861-RGS, 2005 WL 2006833, at *3 (D. Mass. Aug. 17, 2005).

19, 27 (S.D.N.Y. 2016) (awarding 12% of $335 million fund rather than requested 15% to "avoid a windfall to Barrack for charging more than $350 per hour for associates who are contract attorneys in all but name"); *In re High-Tech Employee Antitrust Litigation* ("*High-Tech*"), No. 11-CV-02509-LHK, 2015 WL 5158730, at *13 (N.D. Cal. Sept. 2, 2015) (awarding 9.8% of $415 million fund rather than the requested 19.5%).[3] While CCAF could cite many other cases in support of this point,[4] no such cherry-picking is necessary because Prof. Rubenstein's own list of similarly-sized settlements confirms that 25% is a remarkably high fee for a case of this size.

CCAF anticipates that Class Counsel may submit additional expert testimony in support of their 25% rate. While CCAF and Burch Porter do not have the resources to retain their own expert for this matter, the amicus respectfully requests an opportunity to reply to any new arguments advanced by Class Counsel on this issue.

C. A maximum fee award no higher than $50 million, absent misconduct, would return over $24 million to the class.

A reasonable percentage should be reckoned from the net fund—the amount sent to class members minus reimbursements and administration expenses—but this adjustment makes relatively little difference in this case. "In order to determine a reasonable fee for the services of counsel, it is necessary to understand what counsel has actually accomplished for their clients, the class members. This can only be done when the expenses paid by the class are deducted from the gross settlement." *Teachers' Ret. Sys. v. A.C.L.N., Ltd.*, No. 01-CV-11814(MP), 2004 WL 1087261, at *7 (S.D.N.Y. May

[3] *See also In re Citigroup Inc. Bond Litig.*, 988 F. Supp. 2d 371, 375 (S.D.N.Y. 2013) (awarding 16% rather than 20% in $730 million settlement, in part due to objection by class member represented by CCAF) (cited by Rubenstein at Dkt. 368, 20).

[4] *E.g. Alexander v. FedEx Ground Package System, Inc.*, 05-CV-00038-EMC, 2016 WL 3351017, at *2-3 (N.D. Cal. June 15, 2016) (finding that requested 22% of a $226 million megafund settlement was "well above the typical range" and awarding instead 16.4%, "consistent with the higher end of awards in megafund cases").

14, 2004); *see also Pearson v. NBTY, Inc.*, 772 F.3d 778 (7th Cir. 2014) (excluding administration expenses in calculating fee percentage because such expenses are "costs, not benefits"). "It is only commonsense that a percentage-based fee should be based on the amount actually recovered by the class . . . and not include a percentage of the sums going to pay costs." *Fraley v. Facebook, Inc.*, No. C 11-1726 RS, 2014 WL 806072, at *2 (N.D. Cal. Feb. 27, 2014); *accord* 2003 Advisory Committee Notes to Amendments to Rule 23(h) ("fundamental focus is the result *actually achieved* for class members" (emphasis added)).

This district has followed this approach. Judge Young stated that going forward, he "will award attorneys' fees by reference to the value of benefits actually put in the hands of the class members." *In re TJX Companies Retail Sec. Breach Litig.*, 584 F. Supp. 2d 395, 410 (D. Mass. 2008). More recently, he adhered to this approach noting that "[c]ounting administration fees as part of the settlement valuation for attorneys' fees purposes might also inadvertently incentivize the establishment of costly and inefficient administration procedures which would inflate the benefits valuation without increasing actual benefit for class members." *In re Volkswagen & Audi Warranty Extension Litig.*, 89 F. Supp. 3d 155, 170 (D. Mass. 2015).

Here, the administration expenses are relatively minimal. As of November 2017, $101,237 was paid, with the court approving an additional $49,673 to send an initial round of checks. Dkt. 213-1. Because litigation expenses were $1,257,697.94, the net settlement fund is less than half a percent smaller than the gross fund. Nonetheless, establishing the right rule is vital public policy by "encourage[ing] class counsel's prudence and discretion in incurring expenses—expenses that may not be as closely scrutinized given that there is no single client footing the bill." *In re Libor-Based Fin. Instruments Antitrust Litig.*, No. 11-md-2262, 2018 WL 3863445, at *4 (S.D.N.Y. Aug. 14, 2018).

Absent misconduct, a Rule 23(h) fee award to class counsel no more than about $35.8 to $53.75 million (representing 12-18% of net recovery) cannot be said to be too low and may well be

too high. The fee award here should not exceed $50 million, at most, representing 16.75%, which would increase relief to class members by over $24 million. This figure compares generously—perhaps overly so—with cases Rubenstein cited. *E.g. Currency Conversion Fee*, 263 F.R.D. at 130 (awarding 15.25% of $336 million fund, and 1.6 lodestar multiplier, rather than the requested 25.5%).

II. An 16.75% fee award represents a corrected lodestar crosscheck of 1.82, which Class Counsel already has supported as appropriate for the results in this case.

"[C]ourts making common fund fee awards are ethically bound to perform a lodestar cross-check." Vaughn R. Walker & Ben Horwich, *The Ethical Imperative of a Lodestar Cross-Check: Judicial Misgivings About Reasonable Fees in Common Fund Cases*, 18 GEO J. LEGAL ETHICS 1453, 1454 (2005). Justice Gorsuch and Third Circuit nominee Paul Matey have called the lodestar cross-check an "important safeguard against attorney over-billing." Neil M. Gorsuch & Paul B. Matey, *Settlements in Securities Fraud Class Actions: Improving Investor Protection*, WASH. L. FOUND., 23 (2005), *available at* http://www.wlf.org/upload/0405WPGorsuch.pdf. The crosscheck helps uncover the "disparity between the percentage-based award and the fees the lodestar method would support." *Wininger v. SI Mgmt. L.P.*, 301 F.3d 1115, 1124 n.8 (9th Cir. 2002). "[I]n megafund cases, the lodestar cross-check assumes particular importance." *Alexander*, 2016 WL 3351017, at *2; *see also In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1298 (9th Cir. 1994) (describing how percentage-based awards become particularly arbitrary in a megafund context).[5]

The amicus agrees with Class Counsel that a lodestar crosscheck requires somewhat less rigor than a lodestar-based fee calculation, but the Court should not accept questionable billing rates in

[5] Prof. Rubenstein has opined that lodestar crosschecks are entirely discretionary in the First Circuit. Dkt. 446-2 at 8 n.4. That said, he has also testified that he is not opining as an expert on ethics. Dkt. 401-243 (Rubenstein Depo.) at 150. (Note, however, that Thornton apparently retained him to provide an ethics opinion in this case in 2011. Dkt. 401-275 at 38 ("Read draft opinion from W. Rubenstein to Thornton").) In Rubenstein's personal view courts should always conduct lodestar crosschecks. Dkt. 446-2 at 52. "[C]lass members lose millions, if not tens of millions, of dollars a year because judges don't ask for submission of the lodestar and crosscheck the percentage of work." *Id.*

conducting the crosscheck. A district court "is not bound by the hourly rate requested by the victor's counsel." *Bogan v. City of Boston*, 489 F.3d 417, 429 (1st Cir. 2007). The lodestar "serves little purpose as a cross-check if it is accepted at face value." *In re Citigroup Secs. Litig.*, 965 F. Supp. 2d 369, 389 (S.D.N.Y. 2013). "A reasonable rate is determined by reference to 'the prevailing hourly rate in Boston for attorneys of comparable skill, experience, and reputation.'" *Rudy v. City of Lowell*, 883 F. Supp. 2d 324, 326 (D. Mass. 2012).

Here, the rates for contract and staff attorneys are exorbitant and should be brought in line with prevailing market rates. Like the Special Master, CCAF observes that the proper rate for temporary contract attorneys is their cost on the open market and that highly marked-up rates are an "unfair burden on class members." Report at 189. Sophisticated clients like State Street pay cost for such attorneys, and so absent class members should not be asked to pay more for the purpose of a lodestar crosscheck. Similarly, clients in the market for staff attorneys tend to pay much lower rates than the rates of up to $515/hour claimed by Lieff. Most of the staff attorneys engaged exclusively in document review, and they certainly should not be paid more than the rate of a first year associate. *See generally Lipsett v. Blanco*, 975 F.2d 934, 940 (1st Cir. 1992) (rates should be commensurate "to nature of the tasks"). Upon information and belief, WilmerHale LLP's staff attorneys are billed to paying clients at such rates.

Unless discovery shows that the market rate for such staff attorneys is higher, all document review-focused staff should be billed no more than a maximum of $200/hour, which represents four times their average salary and healthy leverage for Class Counsel even before allowing a lodestar multiplier. A few staff attorneys engaged in more sophisticated work comparable to a midlevel associate, and for these attorneys only somewhat higher rates would be appropriate, yielding a rate of no more than a maximum of $375/hour.

Once these still generous adjustments to rates are applied, the corrected lodestar is $27.4 million. This yields a lodestar multiplier of 1.82. Such lodestar multiplier is appropriate for the results achieved in this case for several reasons. This is almost identical to the 1.8 the multiplier Class Counsel itself argued for in its fee motion. *See In re Petrobras Secs. Litig.*, 317 F. Supp. 3d 858, 876-77 (S.D.N.Y. 2018) (declining to deviate upward from class counsel's originally-requested 1.78 multiplier after court determined lodestar reduction was necessary).

A. The market rate for contract attorneys is their cost on the open market.

Contract attorneys are hired to do relatively unskilled document review work that discerning paying clients refuse to pay a premium for and certainly don't pay rates of up to $515/hour, which is what Lieff and TLF request from the settlement fund. Lieff and TLF seek to credit hourly rates for contract attorneys that are ***ten times*** their market cost, with an additional 2.01 multiplier on top of that. Lieff is correct that "[m]ost important in determining the reasonableness of hourly rates for lodestar purposes is the 'market value of counsel's services.'" Dkt. 367 at 79 (quoting *U.S. v. One Star Class Sloop*, 546 F.3d 26, 40 (1st Cir. 2008)). For contract attorneys, this value is straightforward: their market value is their cost on the market. Unlike the rates for contingency fee attorneys never retained by a paying client, the market rate of contract attorneys can be accurately ascertained—it is the rate they are actually paid by class plaintiffs and defendants across the country.

The Special Master has already determined what Lieff and TLF paid for their seven contract attorneys and has also checked this rate against the rate defendants paid. Report at 167. Evidence of how the plaintiffs' adversary litigates and how they bill is "certainly" "helpful" to the lodestar determination. *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1214 (9th Cir. 1986). This evidence should be used, and it suggests the correct rate for contract attorneys in this case is $50/hour.[6]

[6] CCAF departs somewhat from the Special Master's recommendation to also reimburse the contract attorneys as costs. While this is indeed the standard practice for paying clients, contingency

"[T]here is absolutely no excuse for paying these temporary, low-overhead employees $40 or $50 an hour and then marking up their pay ten times for billing purposes." *In re Beacon Assocs. Litig.*, No. 09 Civ. 777, 2013 WL 2450960, at *18 (S.D.N.Y. May 9, 2013). *See also Lola v. Skadden, Arps, Slate, Meagher & Flom*, 620 Fed. Appx. 37, 40 (2d Cir. 2015) (observing that plaintiff contract attorney was paid $25 per hour, and holding that the work described was so devoid of legal judgment it may not even constitute the practice of law); *Pa. Pub. Sch. Employees Ret. Sys. v. Bank of Am. Corp.*, 318 F.R.D. 19, 26 (S.D.N.Y. 2016) (holding that charging the class $362/hr for temporary attorney work "is unreasonable and warrants a reduction in the attorneys' fees").

Counsel objects that other courts have awarded such rates, but they conflate *ex post* (and largely *ex parte*) fee awards with the actual market rate for legal services. A lodestar calculation depends upon the market rates, so the best authority for how contract attorneys should be billed is the market itself, not fee orders issued from typically-unopposed fee motions. Too often, "[w]ithout the adversarial process, there is a natural temptation to approve a settlement, bless a fee award, sign a proposed order submitted by plaintiffs' counsel, and be done with the matter." *Marshall v. Deutsche Post DHL & DHL Express (USA) Inc.*, 2015 WL 5560541, at *1 (E.D.N.Y. Sept. 21, 2015); *see also, e.g., In re MagSafe Apple Power Adapter Litig.*, 571 Fed. Appx. 560, 571 (9th Cir. 2014) (reversing settlement and few award where district court accepted class counsel's lodestar with "a few boilerplate recitations about the attorneys' skill and the risks of proceeding with the litigation"). That in turn, leads to "proposed orders masquerading as judicial opinions" and ultimately, an entire self-sustaining jurisprudence that has become "so generous to plaintiffs' attorneys." *Fujiwara v. Sushi Yasuda Ltd.,* 58 F. Supp. 3d 424, 436 (S.D.N.Y. 2014). There is no better time than now to break the deleterious cycle.

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class actions attorneys can earn a multiplier to compensate for their risk of non-payment when appropriate in a particular case. Earning a reasonable multiplier for contract attorneys billed at their actual market rate of about $50/hour, is very different from the obscene $515/hour rate Lieff proposes to charge for some of its contract attorneys and then multiply by an additional 2.01.

The fact is that the outmoded orders cited by counsel do not capture the current reality of contract attorney billing, which is almost universally passed on to paying clients at cost. While many courts have approved higher rates for contract attorneys, they do this mostly *sub silentio* without awareness of the issue. Such rates were approved without objection *in this very case* prior to the *Boston Globe*'s article about the award. Contract attorney rates are simply often misunderstood by the judiciary:

> I think the jurisprudence indicates that the rates -- the lodestar is supposed to be calculated on what lawyers are charging to paying clients in the community, however it's properly defined, not -- I think probably many other judges made the same mistake -- well, have understood the representations made the way I have for many years when we try to do that lodestar reasonableness check.

Dkt. 176 at 94 (Tr. 3/7/17).

In the marketplace for legal services, paying clients do not tolerate marking up temporary employees in the way plaintiffs propose to charge the absent class.[7] Imagine if plaintiffs decided to bill Uber drivers (and their trips to and from depositions) as "contract paralegal" fees at ten times the firm's cost. Or imagine expert consultants, technical assistance, or word processing billed in this way. After all, Lieff charges the class $360/hour for a computer systems support (Dkt. 401-247 at 38), so what in principle would prevent them from billing outsourced technical costs the same way as they bill contract attorneys—other than insufficient chutzpah?

A paying client would not tolerate extensive markup on any temporary employees because such workers are fundamentally different from law firm associates, who require ongoing investment, benefits, and salary from the firm whether work is plentiful or scarce.[8] Firms must develop their

[7] Class Counsel have objected that their exorbitant rates do not "charge" anything to class members because the rates are only used to roughly ascertain the fee award as a cross-check. Dkt. 367 at 68. But this is a distinction without difference. The Court must set a reasonable fee, so *of course* excessive rates, if uncritically accepted, will cost class members money.

[8] The Special Master does not explore whether all of the staff attorneys nominally paid for by TLF should be considered contract attorneys. TLF paid Lieff and Labaton for staff attorneys wages

associates, so they select them carefully from among the most qualified applicants. Firms retain associates only when they exhibit superior motivation, work ethic, judgment, and quality; law firm associates are intrinsically costly and they represent the most promising attorneys in their cohort. Contract attorneys, in contrast, are hired to an expressly limited engagement and may be terminated within hours when no longer needed. While they are hired based in part on their past experience reviewing documents, contracting firms gain no benefit from further developing them. So contract attorneys receive no professional development investment, and frequently do not even get health insurance or other benefits. *See Down in the Data Mines A Tale of Woe from the Basement of Legal Practice*, 94 ABA J. 32 (Dec. 2008).

For this reason, knowledgeable clients have long paid contract attorneys at cost, often making their own relationships with staffing agencies as the defendant has in this case. Dkt. 85 (Tr. 3/7/2017) at 84-85; *see generally* David Degnan, *Accounting for the Costs of Electronic Discovery*, 12 Minn. J.L. Sci. & Tech 151, 163-64 (2011).

In short, the marketplace compensates contract attorneys differently than associate attorneys because they *are* different in terms of cost, investment, overhead, type of work, skill level, and experience. Lieff and Rubenstein cannot change this reality by pretending that the market compensates all attorneys linearly based on their year of graduation.

Case law reflects this practice among paying clients. Rubenstein looks to bankruptcy filings for the billing rates of associates and partners at big law firms (Dkt. 446-2 at 12), and a similar comparison can be done with contract attorneys. When sophisticated corporate clients are entitled to fee shifting from each other, they only seek—and are awarded—contract attorney time at or near the

so that TLF would shoulder more of the cost (and get more of the profit) from the litigation. But from TLF's perspective, all of them were short-term workers akin to agency contract attorneys. For the sake of limiting the length of this memorandum, we treat the staff attorneys paid by TLF as if they were TLF's own employees, but it's not obvious why this legal fiction should be credited.

cost of such time. *See*, *e.g.*, *Perfect 10, Inc. v. Giganews, Inc.*, No. 11-cv-07098-AB, 2015 WL 1746484, at *16 (C.D. Cal. Mar. 24, 2015) (awarding defendant in copyright infringement action requested $100/hour for contract attorney time); *Apple, Inc. v. Samsung Elecs. Co.*, No. 11-cv-1846-LHK, 2012 WL 5451411, at *3 (N.D. Cal. Nov. 7, 2012) (party submitted hourly rate of $125 for contract attorney time in connection with Rule 37 sanction); *4Kids Entm't, Inc. v. Upper Deck Co.*, No. 10-cv-3386, 2012 WL 2426569, at *7 (S.D.N.Y. June 21, 2012) (setting $50/hour rate for contract attorney time); *Tampa Bay Water v. HDR Engr., Inc.*, 8:08-CV-2446-T-27TBM, 2012 WL 5387830, at *15 (M.D. Fla. Nov. 2, 2012) (awarding $85/hour for contract attorneys). Lieff seeks to subject absent class members to fees that multinational corporations do not bear.

B. The lodestar is overstated by over $7 million because the staff attorneys' rates are exorbitant for document review.

As used by big law firms retained by sophisticated clients, staff attorneys are used to save clients' money on routine work such as document review. Paid about half the salary of partnership-track associates, staff attorneys are typically billed at the rates of junior associates—or even lower. *See At Well-Paying Law Firms, a Low-Paid Corner*, N.Y. TIMES (May 23, 2011) (describing emergence of staff attorneys, describing their work, and noting entry level salaries that are only 30-40% as much as associates at the same firms).[9]

As employed by Class Counsel in this case, staff attorneys are a cynical profit center. Rates claimed for staff attorneys—up to $515/hour—actually exceed the costs these firms could credibly bill for junior associates doing the same work. Dkt. 104-17 at 8 (four staff attorneys with rates of $515/hour billed for over $2 million combined lodestar). Yet the salary for these attorneys is much lower than the salary for junior associates: "the vast majority of the staff attorneys were paid in the range of $40-$60 an hour, plus benefits." Report at 177. While law firms are entitled to markup full-

[9] Available online at: http://www.nytimes.com/2011/05/24/business/24lawyers.html.

time employees, the rates awarded must bear some resemblance to actual market rates. Staff attorney rates in this case simply do not pass the laugh test. As Lieff admits, $515/hour is the rate of an eighth-year associate on the verge of partnership. Dkt. 369-1 at 22. In fact, one of the partners in this case—Evan Hoffman—billed just a smidgen more than this rate ($535/hour).

Class Counsel pretends that their staff attorney rates represent a savings over associate because their staff attorneys have graduated years ago, but this assertion is a non-sequitur. The market for legal services does not value every lawyer ten years out of law school at $600 an hour. CJA panel attorneys would be surprised by this immodest premise. The market for legal services compensates time for staff attorneys differently than partnership-track associates because they *are* different—they are paid less and generally confined to lower level work even if they have a senior graduation year. While law firms may be entitled to leverage on their permanent attorneys, the market rate for staff attorney time is much lower than the senior associate-level rates earlier approved here.

Except for the rate of Michael Bradley, the Special Master does not adjust the rates of any staff attorney, even though he notes the rates TLF charges for the very same attorneys are almost uniformly higher than rates claimed by Labaton and Lieff. *See* Report at 169 n.134. He concludes that because some staff attorneys were doing the work of associates, the rates are essentially fine, thus giving a pass to ***over half the lodestar value claimed in this case***. *Id.* at 72. While some of the staff attorneys sometimes "prepared very detailed, substantive legal memoranda on issues that Customer Class Counsel wanted to explore" (*id.*), Class Counsel's detailed billing records reflect that the vast majority of staff attorney time was consumed with document review, which militates in favor of lower fees for the purpose of the crosscheck.

Even if the review of documents was assigned to associates, many courts refuse to permit full lodestar rates to be charged, given that large-scale document review can be performed more economically by other professionals. *E.g., City of Pontiac Gen. Emples. Ret. Sys.*., 954 F. Supp. 2d at 280

("a sophisticated client, knowing these contract attorneys cost plaintiff's counsel considerably less than what the firm's associates cost (in terms of both salaries and benefits) would have negotiated a substantial discount in the hourly rates charged the client for these services").

Especially given Class Counsel's deceptive statements about the "regular rates charged" for attorneys' services, the Court should strive to use realistic market rates in its crosscheck. The market rates for discovery-focused staff attorneys can be discovered from WilmerHale, which employs them. "One way to judge the legitimacy of the plaintiff's fees is to look at the defendant's fees." *Dreher v. Experian Info. Solutions, Inc.*, 2016 WL 4055638, at *2 (E.D. Va. Jul. 26, 2016).

Failing that, staff attorney time should be adjusted to the rates of junior associates, which better comports with the Report's findings about their work level, and which are inconsistent with $415/hr and higher rates. *See* Report at 169 ("the staff attorneys performed associate-level work (albeit that of a junior-level associate)"). Any rate higher than $200/hour for the vast majority of staff attorney time, which consists of document review, would be unduly excessive. Such rate is, if anything, overly generous for attorneys doing the work of junior associates. *See Gonzalez v. Scalinatella, Inc.*, 112 F. Supp. 3d 5, 28 (S.D.N.Y. 2015) ("$250.00 for a third-year associate, $200.00 for a second-year associate, $175.00 for a first-year associate, and $125.00–$130.00 for paralegals—'are higher than the norm in this district'"). CCAF proposes using this rate only for the purpose of a crosscheck in the absence of discovery on actual market rates for discovery staff attorneys. Better evidence would be needed to calculate a lodestar-based award, and the time entries would need to be further scrutinized as the Special Master did not conduct a line-by-line review. Erroneous overbilling is evident on the face of Class Counsel's detailed hours. *See* Section IV.

Among the rates that should be reduced to no more than $200/hour at most is the one for Michael Bradley, which answers TLF's objection that his rate has been singled out by the Report "despite [his] similarity" to other staff and contract attorneys. Dkt. 361 at 85. CCAF agrees that the

Special Master's conclusion that "the work he performed was simple, straightforward, and unmonitored document review" should compel a systematic adjustment to all staff attorneys. *Id.* at 84.[10]

The Special Master has found that some staff attorney work more closely resembles tasks assigned to a mid-level associate, and a review of attorney billing descriptions suggests this is true. While the vast majority of staff attorney time was devoted to rote document review, some staff attorneys appear to have had a more supervisory role. The undersigned has sorted the billing descriptions of contract attorneys and has identified the billers with more sophisticated roles in the case. For the purpose of a cross-check, these attorneys should be billed at no more than the rate of a mid-level associate—about $375/hour, not $515. The reasonableness of this lower rate is confirmed by the fact that Joshua Bloomfield, who Lieff claims at $515/hour with a total lodestar of over $1 million, has since moved to Gibbs Law Group as an associate, where his billing rate is now $395. *See In re Anthem, Inc. Data Breach Litigation*, No. 15-md-02617-LHK, Dkt. 944-6 at 7 (N.D. Cal. Jan. 25, 2018) (fee request). The following staff attorneys either billed more than 10% of their time on tasks besides routine document review and/or were mentioned billing descriptions of associates and partners more than once: D. Alper, J. Bloomfield, T. Kussin, L. Nutting, and R. Yamada. Bednarz Decl. ¶ 9. These attorneys' hours as staff attorneys have been counted at $375/hour for the purpose of the cross-check.

Finally, several non-attorneys who supported document review should have their rates reduced. Namely, K. Dugar, various described as "staff attorney supervisor" (Dkt. 446-5 at 4) and "litigation support manager" (Dkt. 367 at 56) should have his or her rate reduced from $450 to no

[10] That said, Michael Bradley was indeed uniquely unmonitored. Class Counsel's document review supervisors had no idea what he was doing. Report at 193. No evidence appears to exist showing that he performed any task that benefited the class.

more than $325/hour, which is a generous rate for an experienced paralegal. The same rate should also be applied to Anthony Grant and Willow Ashlynn, who apparently supported staff attorneys using the Relativity database. Dkt. 407-57 at 16.

C. Applying these generous rates yields a lodestar multiplier of 1.82.

Adjusting the billing rates to the maximum rates discussed above results in a revised lodestar multiplier of 1.82 for a fee award of $50 million.

To prepare its lodestar cross-check, the undersigned reconstructed staff and contract attorney hours.[11] *See* Bednarz Decl. ¶¶ 3-10. Using these hours, and applying the upper-end rates of $50/hour for contract attorney time and $200 or $375/hour for staff attorneys, and $325/hour for the staff listed above results in a corrected lodestar of $27.4 million. The table below shows the originally-claimed lodestar for each firm, which includes $4.05 million of fictitious double-counting (Dkt. 104-24) and the corrected lodestar. The third column scales up this award by the overall multiplier of 1.82 to show an allocation for the maximum fee award of $50 million (absent reductions resulting from Class Counsel's error and misconduct).

Firm	Claimed Lodestar	Corrected Lodestar	Share of $50 Million
Labaton Sucharow LLP	$17,368,905.50	$9,872,573.00	$18,008,302.66
Thornton Law Firm LLP	$7,460,139.00	$5,623,724.50	$10,258,089.04
Lieff Cabraser Heimann & Bernstein LLP	$9,800,487.50	$5,220,509.00	$9,522,594.17
Keller Rohrback LLP	$2,561,287.00	$2,561,287.00	$4,671,976.75
McTigue Law LLP	$2,625,503.75	$2,625,503.75	$4,789,112.84
Zuckerman Spaeder LLP	$1,174,925.00	$1,174,925.00	$2,143,150.02

[11] Surprisingly, neither Class Counsel nor the Special Master states how many hours were actually billed by each attorney in the case. For example, the only document purporting to show the alleged $37,265,241.25 lodestar and 2.01 multiplier appears to Labaton's November 10, 2016 letter to the court, which does not show its work. Dkt. 116. In spite of valiant effort, the undersigned has not been able to replicate this exact number. Bednarz Decl. ¶ 8. This showing would not suffice to justify a lodestar-based award. *See Weinberger v. Great N. Nekoosa*, 925 F.3d 518, 527 (1st Cir. 1991).

Richardson Patrick Westbrook & Brickman LLC	$137,411.00	$137,411.00	$250,647.82
Beins Axelrod PC	$187,712.00	$187,712.00	$342,400.56
Feinberg Campbell & Zack PC	$7525.00	$7525.00	$13,726.16
Total:	$41,323,895.75	$27,411,170.25	$50,000,000

Bednarz Decl. ¶ 11.

A maximum lodestar multiplier of 1.82 is more than reasonable given that the majority of hours were billed in the final months—after an agreement-in-principle was reached in *BONY Mellon*—when the case was substantially less risky. *See* Section II.D, below. In fact, the multiplier is actually higher than the 1.8 multiplier Class Counsel requested and higher than the average multiplier in class action settlements. *See* Rubenstein, 5 NEWBERG ON CLASS ACTIONS, § 15:89 (reporting 1.42 average multiplier); Fitzpatrick at 833-34 (1.65 average multiplier).[12]

Interestingly, the awards set forth in the table above results in significantly higher awards for ERISA counsel even though the overall fee award is reduced by 50%. This occurs for two reasons. First, the original fee application gave a misleading picture of what ERISA counsel would receive. While the original (fictitious, double-counted) lodestar figures suggested ERISA counsel had billed 16.2% of the lodestar, because of Class Counsel's undisclosed fee sharing agreement, ERISA counsel's percentage of the fees was limited to 10%. Second, because ERISA counsel did not employ armies of contract and staff attorneys, their lodestar figures were not as exorbitantly over-inflated and thus require less downward adjustment. Thus CCAF reckons the correct share of the award for ERISA counsel is 24.4%. Under this calculation and using the maximum fee award set forth above, ERISA counsel would share about $4.7 million more than they received in 2016 (*see* Report at 88), which renders obsolete the Special Master's propose resolution to direct most of the Chargois fee disgorgement to ERISA counsel. That money should go instead to the class.

[12] Where multipliers have been higher in megafund cases, this is because courts often fail to even perform a lodestar crosscheck, which results in too-common windfall payments.

III. A fee award of no more than 16.75% for a 1.82 lodestar multiplier is, if anything, too generous in this case because the majority of attorney time was cynically churned when the case was not risky.

The proposed $50 million fee award has a higher multiplier than awarded in *In re Bank of New York Mellon FOREX Transactions Litigation* ("*BONY Mellon*"), which achieved better results with much more risk than this case. No. 12-md-2335 (LAK) (JLC), Dkt. 637 at 3 (S.D.N.Y. Sept. 24, 2015). By all indications, this case was less costly, less risky, and less successful than the settlement achieved in *BONY Mellon*, where counsel were awarded a 1.6 lodestar multiplier. *Id.* A 1.8 multiplier in this case more than adequately compensates counsel for their work and risk.

While the First Circuit has not provided a list of factors for evaluating the reasonableness of a fee award, courts in this district often use the *Goldberger* factors from the Second Circuit:

> (1) the size of the fund and the number of persons benefitted; (2) the skill, experience, and efficiency of the attorneys involved; (3) the complexity and duration of the litigation; (4) the risks of the litigation; (5) the amount of time devoted to the case by counsel; (6) awards in similar cases; and (7) public policy considerations.

In re Neurontin Mktg. and Sales Practices Litig., 58 F. Supp. 3d 167, 170 (D. Mass. 2014) (citing *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir.2000)).

An examination of these factors shows that a $50 million fee award is cannot be said to be too low and may well be too high. Awards in similar cases are examined in Section I, and these overwhelmingly show that a 25% award is excessively high for a settlement of this size. The Special Master and Class Counsel make much of the "outstanding result" achieved in this class, but this result was not achieved by the approximately 60,000 hours of document review billed in this case. Before the settlement agreement was filed on July 26, 2016, the case had been stayed for mediation continuously since November 19, 2012. Dkt. 62. Over this time, no depositions were taken. No motions were argued. Instead, the parties negotiated toward settlement.

In short, this case was not risky while it was in mediation, and so the lodestar multiplier—to the extent one is appropriate at all—should be modest. Ted Frank explained this concept in his November 13, 2016 memo to Andrea Estes of the *Boston Globe*, and the Memo has been in the record of this case since February 17, 2017:

> A higher contingent-fee percentage (and multiplier of lodestar) is designed to compensate class counsel for the risk that they will be unpaid in litigation, and if the defendant has made clear its willingness to settle rather than to win, class counsel is facing substantially smaller risk of being unpaid.
>
> Assuming that this case was of average risk, an appropriate percentage would have been in the 17.8% range. If, as the record appears to indicate, class counsel faced little or no post-motion-to-dismiss risk because of the willingness of State Street to resolve the case in mediation once government investigations concluded, even an 17.8% figure would overcompensate class counsel. Asking for 24.85% while misrepresenting the Fitzpatrick report as class counsel did is, in my opinion, abusive and objectionable, though it is certainly true that some courts have chosen to award similarly oversized percentages of similarly-sized settlements. Others have not. For example, around the same time as this fee request, class counsel in *Dial Corp. v. News Corp.*, 2016 U.S. Dist. LEXIS 150528 (S.D.N.Y. Oct. 31, 2016) asked for 30% of a $244 million settlement fund. The court awarded 20%.

Dkt. 125-2 at 4.

CCAF is disappointed that the Special Master did not question Class Counsel about their misrepresentation of Fitzpatrick or second-guess the assumption that the case was especially risky. But the record suggests that Class Counsel intentionally churned during the final months from February to June 2015, by which time the *BONY Mellon* case had reached an agreement-in-principle with the joint effort of private counsel and the Department of Labor.

As that case settled, the writing was on the wall to both plaintiffs and defendant that this case would follow, and on similar terms—so similar that the *BONY Mellon* settlement was called a "template." Dkt. 401-9 at 110. This is precisely when Class Counsel staffed platoons of document reviewers to churn on this case—not to improve recovery to the class, but to obtain a larger slice of

the fee pie from each other. Because there was no risk to counsel toward the end of the case, when the goal was only to "jack up" the lodestar, no risk multiplier should be awarded for this portion of the billing. Dkt. 401-63 at 3.

No paying client would tolerate their attorneys billing a case to death on the eve of certain settlement—it's outrageous conduct. Since ATRS seems to have had little interest in overseeing Class Counsel (and indeed instructed counsel not to tell them about referral fees), the Court must act as the fiduciary for the class. This Court should emphatically reject the argument proffered by Class Counsel that multipliers of 3 or even higher could be blessed in a case where counsel spent years in mediation and "jacked up" half of the entire lodestar when settlement was inevitable. A 1.82 multiplier can be thought of as the equivalent of a 5.0 multiplier for work prior to the motion to dismiss (suggesting a very pessimistic 80% risk of failure), a 1.5 multiplier for work after the case was stayed for mediation until February 2015 (33% risk of failure), and a 1.0 multiplier for the last few portion of the bill when settlement was inevitable and counsel cynically churned staff and contract attorney time in order to capture a larger slice of the certain pie. If anything, this structure is overly generous.

A. Lodestar multipliers chiefly exist to compensate for the risk counsel takes in prosecuting a case on contingency, but the vast majority of the billing in this case was churn billed without risk.

"A proper attorneys' fee award is based on success obtained *and* expense (including opportunity cost of time) incurred." *Mirfasihi v. Fleet Mortg. Corp.*, 551 F.3d 682, 687 (7th Cir. 2008). In awarding fees, courts utilize the lodestar crosscheck to "confirm that a percentage of recovery amount does not award counsel an exorbitant hourly rate." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 945 (9th Cir. 2011); *In re Cendant Corp. Litig.*, 264 F.3d 201, 285 (3d Cir. 2001) ("The goal of [the lodestar cross check] is to ensure that the proposed fee award does not result in counsel being paid a rate vastly in excess of what any lawyer could reasonably charge per hour, thus avoiding a 'windfall' to lead counsel.").

The lodestar multiplier exists to compensate counsel for the risk of nonpayment. In *Steinlauf v. Continental Illinois Corp.*, 962 F.2d 566, 569 (7th Cir. 1992), Judge Posner described the effect of risk on setting a reasonable multiplier:

> Suppose a lawyer can get all the work he wants at $200 an hour regardless of the outcome of the case, and he is asked to handle on a contingent basis a case that he estimates he has only a 50 percent chance of winning. Then if (as under the lodestar method) he is still to be paid on an hourly basis, he will charge (if risk neutral) $400 an hour for his work on the case in order that his expected fee will be $200, his normal billing rate. If the fee award is to simulate market compensation, therefore, the lawyer in this example is entitled to a risk multiplier of 2 (2 × $200 = $400).

In general, we can expect that plaintiffs' counsel in the *ex ante* world would not agree to a contingent fee unless, given the risk of nonpayment and the stakes of the case, the percentage of recovery would, on average, produce an expectation of at least a lodestar amount on average. After all, attorneys can realize lodestar simply by offering hourly billing rates to defendants or other clients who pay in advance.

While a multiplier of two may be appropriate in a case with extraordinary risk and results (perhaps 50% risk of nonpayment), from the time this case entered mediation, the risk was lower. By mediating, instead of fighting tooth-and-nail, the defendant signaled it was willing to settle. And the case stayed in mediation—*for years*—because Class Counsel accurately perceived that the defendant would settle and was not just stringing them along. Thus, there was a high likelihood that Class Counsel would collect fees at that point, and it was just a question of how large the pot would be.

Class Counsel's defense of high multipliers fails to take risk into account. There is a "strong presumption that the lodestar is sufficient" without an enhancement multiplier. *Perdue v. Kenny A.*, 130 S. Ct. 1662, 1669 (2010). A lodestar enhancement is justified only in "rare and exceptional" circumstances where "specific evidence" demonstrates that an unenhanced "lodestar fee would not

have been adequate to attract competent counsel." *Id.* at 1673.[13] "[T]he burden of proving that an enhancement is necessary must be borne by the fee applicant." *Id.* Instead, Class Counsel and Prof. Rubenstein have simply cited to cases where high multipliers—sometimes appallingly ridiculous multipliers—were approved, to argue that a 2.01 or 2.07 or 3.0 multiplier here would be "well within the range of reasonableness." Dkt. 446-2 at 21; *see also* Dkt. 367 at 72. This is incorrect: when there is no risk, a multiplier of 1.0 is presumptively reasonable. While the Court found that the case was "risky" (Dkt. 114 at 36), it also found rates were reasonable. Uncontested representations often do not withstand adversarial scrutiny, and this is no exception.

After the case survived a motion to dismiss and entered mediation, there was no particular reason to find the case risky. To the contrary, the Department of Justice, Department of Labor, and state governments' coordinated investigation of the same underlying conduct suggested that State Street would sooner or later have to reckon with private claimants as well.

The risk of non-payment dropped to essentially zero on February 5, 2015, when an agreement-in-principle was reached in analogous litigation by Ohio pension funds in *BONY Mellon*. No. 12-md-2335, Dkt. 630, Mot. For Final Approval (S.D.N.Y. Sep. 15, 2015), at 6. Lieff and TLF immediately knew of this development because they were also counsel in *BONY Mellon*.

B. Class Counsel's request for a 1.6 multiplier in *BONY Mellon* shows why a $50 million fee award with 1.82 multiplier in this case may be too high.

This case settled not due to any particular good bit of lawyering in this case, but due to success in *BONY Mellon*. This case, which was stayed for almost 4 years without substantive action, became more valuable and even less risky due to success in *BONY Mellon*. In Daniel Chiplock's own words,

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[13] *Perdue*'s limitation on enhancements was made in the context of interpreting 42 U.S.C. § 1988's language of "reasonable" fee awards, but several courts hold it has equal application to "reasonable" fee awards in class actions made under Fed. R. Civ. P. 23(h). *See, e.g., Van Horn v. Nationwide Prop. & Cas. Ins. Co.*, 436 Fed. Appx. 496, 500 (6th Cir. 2011); *Weeks v. Kellogg Co.*, No. 09-cv-8102, 2013 WL 6531177, at *34 & n.157 (C.D. Cal. Nov. 23, 2011); *cf. also In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333, 361 (3d Cir. 2010) (Weis, J. concurring/dissenting) (referring to *Perdue* as an "analogous statutory fee-shifting case.").

the *BONY Mellon* result "doubled the value of State Street." Dkt. 401-86 at 5. True, many of the same attorneys were involved, but they were already paid for the risk and unexpected success of *BONY Mellon*—by the judge in *BONY Mellon*. No. 12-md-02335, Dkt. 637 (S.D.N.Y. Sep. 24, 2015).

Unlike the defendant here, BONY Mellon did not agree to endless mediation, but fought a scorched earth war of attrition against its opposing plaintiffs. An astonishing 110 depositions were taken, including 18 harassment-maximizing depositions of plaintiff fund officers. BONY Mellon wielded counterclaims against the named plaintiffs, which the district court refused to dismiss, and which could potentially make the Ohio public funds plaintiffs liable for millions of dollars of attorneys' fees (potentially subjecting the officers to public criticism and malpractice suits). In the end, plaintiffs emerged with a $336 million settlement that paid its class members 35% of the estimated damages. Plaintiffs sought and were awarded 25% of this common fund, for an average 1.6 lodestar multiplier—which the court justified based on the phenomenal results, breathtaking risk, and heroic effort. *BONY Mellon*, Dkt. 12-md-02335-LAK, Dkt. 642, Transcript (S.D.N.Y. Sep. 24, 2015). But that case is over. The attorneys responsible for that success have already been paid.

This settlement compares unfavorably in almost every way to *BONY Mellon*. While this settlement's recovery of 20% of estimated damages is not unreasonable for a class action, it's no *BONY Mellon* in terms of success. The risk here was comparatively minute once plaintiffs survived a motion to dismiss, as plaintiffs' expert in *BONY Mellon* observed. Prof. John Coffee opined that the 25% fee request in *BONY Mellon* was justified due to the unprecedented success and high risk that class counsel in that case would recover nothing. About this case, he remarked:

> The only other custodial FX class case of which I am aware, Arkansas Teacher Retirement System v. State Street Corporation, et al., No. 11-cv-10230 MLW (D. Mass.), survived a motion to dismiss in 2012, but then was ordered into mediation by the presiding judge, where it has remained throughout the pendency of this MDL. That case involved far fewer causes of action than those alleged here, and also benefitted from a powerful unifying theory of liability that was not generally available to class members in this case (namely,

> violation of the Massachusetts consumer protection statute, which has been held by some courts to be available to out-of-state plaintiffs suing an in-state defendant, and which provides for double or treble damages and prejudgment interest at a rate of up to 12%).

BONY Mellon, Dkt. 12-md-02335-LAK-JLC, No. 620 at 14 n.15 (S.D.N.Y. Aug. 17, 2015). Prof. Coffee's assessment of the "powerful" Ch. 93A claims here matches Class Counsel's own candid banter about the case. *See* Dkt. 107-86 at 3 (Lieff attorney taking credit for having "developed the ch. 93A theory (the most readily certifiable claim in State Street, and by far the most valuable).").

The fact that defendant was willing to settle and that the value of the settlement turned on other litigation demonstrates that a 25% award here would constitute a windfall. For an extreme example of this principle, the plaintiffs in *Heien v. Archstone* sought a 33% award of the $1.3 million settlement they negotiated, but Judge Young awarded them $29,250 (2.25%), or less than half the lodestar plaintiffs claimed. 837 F.3d 97, 99 (1st Cir. 2016). The First Circuit affirmed, finding the district court correctly pointed out the "relevant legal issues had already been resolved" in another case and that *Heien* "had not proceeded to discovery, nor had the parties engaged in any significant motion practice." *Id.* at 101. The First Circuit further found that the district court had reasonably deducted hours from the lodestar award for waste, and rejected plaintiffs argument "that the fee award constitutes an impermissibly low percentage of the total common fund." *Id.* at 102.[14] While plaintiffs' claims were not decided by *BONY Mellon* litigation, similar reasoning applies here. This case was stayed for *years*, the value of the settlement increased greatly on the resolution of *BONY Mellon*, and the lodestar claimed by Class Counsel appears to be the product of strategic churn—deliberate waste calculated to increase the attorneys' fee award.

[14] At the November 7 hearing, the undersigned advised that a guardian *ad litem* could appeal a decision it believed to be erroneous. Dkt. 519 (Tr. 11/7/2018) at 95. The possibility of an appeal exists but the likelihood of an appeal appears to be modest. CCAF attorneys do not anticipate they would find such appeal fruitful given the abuse of discretion standard for fee awards.

C. Half of Class Counsel's hours were billed as apparent make-work between February and June 2015, after the *BONY Mellon* agreement made settlement near-certain.

It is difficult to fathom how much higher the lodestar in this case is relative to *BONY Mellon*. Class Counsel asserts that the non-double-counting lodestar here is $37,265,241.25. Dkt. 116. In *BONY Mellon*, with many of the same attorneys billing similar rates,[15] the lodestar was $52,097,202.06. For just $15 million more, the plaintiffs in *BONY Mellon* took and defended 110 depositions (0 here), exchanged 11 expert reports (0 here), and defeated four motions to dismiss in two venues (1 here). Plaintiffs in *State Street* instead mediated and reviewed documents for years on end, dramatically expanding their staffing in the final few months. Document production was not more burdensome in this case either; the reverse is true. State Street produced 19 million pages, compared to 20 million produced by defendants in *BONY Mellon*. ATRS and other plaintiffs produced about 80,000 pages, compared to 6 million pages produced by plaintiffs in *BONY Mellon* in response to tooth-and-nail counterclaim discovery. BONY Mellon also conducted extensive third-party discovery; 3.3 million pages from third parties were produced and needed to be reviewed in that case. *BONY Mellon* thus had 50% more documents than this case, and reviewing them was much more time sensitive due to rapid-fire fact depositions.

These differences sharply call into question the reasonableness of the lodestar here. Roughly the same number of hours was spent on document review in this case, which was never litigated

[15] The Special Master finds staff attorney rates reasonable in part because some of the same attorney's rates were approved in *BONY Mellon*. Report at 225. However, this conclusion is unwarranted because the Judge in *BONY Mellon* has not been shy about slashing similar fees to avoid windfalls. *See In re IndyMac Mortgage-Backed Secs. Litig.*, 94 F. Supp. 3d 517, 523 (S.D.N.Y. 2015) (accepting rates of $210 to $420 for associates, but finding 32,000 hours devoted to discovery unreasonable in a case with "only" 15 depositions, and reducing hours and awarding 1.33 of adjusted lodestar or 8.2% of $346 million fund). Rather, the *BONY Mellon* billing request was approved in full because "[t]his really was an extraordinary case in which plaintiff's counsel performed, at no small risk, an extraordinary service, and they ought to be compensated for it." No. 12-md-02335-LAK, Dkt. 642, Transcript (S.D.N.Y. Sep. 24, 2015). These facts do not exist here.

beyond a single motion to dismiss, and which had much less voluminous and acrimonious document discovery. The hours billed in *BONY Mellon* seem like hours efficiently spent to win hard-fought victory for class members. The hours billed in this case appear largely to be churn performed by Class Counsel competing for a larger slice of the pie under their 20/20/20 agreement (where each lead firm was guaranteed 20% of the fee award, but the remaining money would be allocated based on lodestar). Dkt. 401-82. Each firm thus had an incentive to "jack up" their lodestar, as Garret Bradley indelicately put it on February 6, 2015. Dkt. 401-63 at 3.

The hours billed during the first half 2015 are especially suggestive. Document review was ramping up precisely when *BONY Mellon* reached an agreement-in-principle, on February 5, 2015.

> Between January and March 2015, Labaton bolstered their document review team, maintaining more than fifteen to twenty different SAs on the *State Street* case at any given time. Lieff did the same, assigning fifteen SAs (thirteen of whom transitioned directly from the *BONY Mellon* review) and two "contract" attorneys to complete the review.

Dkt. 401-232 (Gellers Report) at 12.

The sudden urgency Class Counsel apparently felt toward document review in *State Street* is difficult to explain as a matter of legal strategy. The case continued to be stayed, and the Court had expressed no reservations about extending the stay. But as a matter of game theory, the ramp-up makes perfect sense: Class Counsel realized settlement would soon occur, precipitated by the template *BONY Mellon* settlement, and a land rush was on to claim the largest slice of the certain fee award through make-work document review.[16] This suggest that the risk of the case was much lower than

[16] After the land rush ended, in August 2015, attorneys got testy—paranoid that they might "suddenly see an additional 12,000 hours mysteriously appear" on another firm's bill. Dkt. 401-150. Daniel Chiplock proposed fixing the exact fee split between Class Counsel in writing, but Garrett Bradley replied they should wait for the actual fee award before deciding how to split it. Dkt. 401-84 at 1. Chiplock answered there was no need to wait because the Court was "not a skeptical judge, as far as we can tell," unlike Judge Kaplan in *BONY Mellon*. *Id.*

in *BONY Mellon*, particularly in the final months, and that the effort expended in these months was more for the benefit of the firms involved than the class members. These riskless hours themselves should be discounted steeply as excessive. *Cf. e.g., In re Citigroup Secs. Litig.*, 965 F. Supp. 2d 369, 391-92 (S.D.N.Y. 2013) (eliminating post settlement hours).

In any event, the lower risks here compared to *BONY Mellon* confirm that a 25% fee award and a 1.6 lodestar multiplier would be excessive compensation for Class Counsel for their results here.

IV. The Court should calculate an appropriate fee award for each firm, and only then deduct costs and impose penalties.

The Special Master's Report and Proposed Resolution recommends adjustments to fees retained by the law firms, but this entire approach oddly treats Class Counsel's division as the baseline. Class Counsel's fee division was an arbitrary and concealed product of compromise among the firms. There is nothing sacrosanct about how Class Counsel decided to carve up $75 million—especially given the undisclosed $4.1 million diversion to Chargois—and this status quo makes a poor baseline.

For this reason, once a reasonable total fee award has been decided, the Court should set the fee award on a much firmer foundation. As the Court observed, it has the authority to set fee awards with respect to each individual firm. Dkt. 519 at 84 (Tr. 11/7/18). "In a class action settlement, the district court has an independent duty under Federal Rule of Civil Procedure 23 to the class and the public to ensure that attorneys' fees are reasonable and divided up fairly among plaintiffs' counsel." *In re High Sulfur Content*, 517 F.3d 220, 227 (5th Cir. 2008). "[T]he district court must not . . . delegate that duty to the parties." *Id.* at 228 (internal quotation marks omitted).

If fees are allocated by the district court in accordance with the fee papers submitted, it encourages class counsel to truly police one another's hours for reasonableness, rather than turning a blind eye to lack of billing judgment. *See* Jessica Erickson, *The Market for Leadership in Corporate Litigation*, 2015 U. Ill. L. Rev. 1479 (2015) (counsel will punish inefficiency when dividing up the fee award). The

Court should not award a lump sum to be privately and secretly partitioned; rather "the better practice" is for the parties to propose an allocation and for the court to approve or disapprove it. *In re Critical Path, Inc., Sec. Litig.*, No. C 01-00551 WHA, 2002 WL 32627559, at *8 (N.D. Cal. Jun. 18, 2002). After the 2003 amendments to Rule 23, in some courts this better practice has become a required practice. *High Sulfur*, 517 F.3d at 228. Class Counsel's own expert believes courts should exercise such oversight more often. "Look, the law says that the judge is a fiduciary and oversees fee allocation. Ninety-nine percent of the judges say we don't want to know. . . . the class representative . . . [is] not really to be able to oversee and manage the lawyers. It's precisely why we make the judge the fiduciary for the absent class members, and the judges themselves neglect this authority." Dkt. 401-243 (Rubenstein Depo.), at 142-43.

Setting an award for each firm involves slightly more arithmetic, but it is worth the effort. Counsel cannot be prejudiced by such an process. To the extent that a new bespoke fee order awards a smaller payment than previously received, each firm will have to forfeit the excess—which has been deposited in their bank accounts since 2016. For each firm that owes money back to the class, or possibly to ERISA counsel, the firm has effectively enjoyed an interest-free loan on the difference.

A. Awarding attorneys' fees to each firm provides a firmer basis for untangling the double-counting, and the Special Master's other recommendations can be applied on top of firm-specific fee award.

Setting fee awards for each firm ensures that every firm is dealt with equitably and better rationalizes the Special Master's recommendations.

For example, the Special Master proposes to disgorge $4.05 million from Class Counsel, but an adjustment of this magnitude becomes unnecessary should the Court assign reasonable awards for each firm. The problem with the Report's recommendation is that it incorrectly identifies this disgorgement as a sanction. One third of this $4 million disgorgement—$1.35 million—seems wholly disproportionate to TLF and Lieff, which share comparatively little blame for the actual double-

counting error. Dkt. 515 at 6. Instead, the Special Master's recommended disgorgement should be thought of as an adjustment to the total fee award—effectively removing the excess billing to give Class Counsel the multiplier they originally sought. Seen this way, CCAF's recommended approach makes it unnecessary to apply the entire proposed $4.05 million adjustment for the double-counting error. The heavy lifting is resolved by simply calculating reasonable fees that should have been awarded to begin with in the absence of double-counting or other misconduct.

Having removed the excess billing *ab initio*, the Court is free to assign a more reasonable adjustment for the misleading statements and errors in the TLF and Labaton declarations. For example, the Special Master recommends a sanction "in a range of $400,000 to $1 million" for TLF's misleading declaration. Report at 365. Perhaps a similar-magnitude sanction would be appropriate for Labaton for their declaration due to its: (1) similarly misleading language about rates, (2) failure to disclose the Chargois arrangement, and (3) failure to perceive the double-counting error when they had the only opportunity to catch it. A sanction of this magnitude for the double-counting error seems more defensible than $4.05 million.

Calculating the fee award that ought to have been granted also eliminates the need to apply kludgy disgorgement as to Lieff and TLF for their use of contract attorneys. As explained above, all contract attorney time has been reasonably assessed at $50/hour, as the market values it, so further adjustment is unnecessary.

B. Additional sanctions and the costs of the investigation should be taxed to each firm's individual fee award.

By precisely apportioning each fee award, the Court can then apply sanctions and tax costs on the firms responsible for them. "A party whose unreasonable behavior has occasioned the need to appoint a master . . . may be charged all or a major portion of the master's fees." Advisory Committee Notes to 2003 Amendments to Rule 53. "[T]he district court enjoys broad discretion to allocate the

master's fees as it thinks best under the circumstances of the case." *Aird v. Ford Motor Co.*, 86 F.3d 216, 221 (D.C. Cir. 1996); *accord Latin Am. Music Co. v. Archdiocese*, 499 F.3d 32, 43 (1st Cir. 2007); *K–2 Ski Co. v. Head Ski Co., Inc.*, 506 F.2d 471, 476 (9th Cir.1974). "[E]quity requires that the loss, which consequence thereof must fall on one of the two, shall be borne by him by whose fault it was occasioned." *Neslin v. Wells*, 104 U.S. 428, 437 (1882).

Should the Court ultimately appoint a guardian *ad litem*, the guardian's fees could also be taxed to firms as appropriate.[17] Such costs would "'pale in comparison to the significant amounts of money' to be divided between plaintiffs and counsel in high-value cases." *Laffitte v. Robert Half Int'l., Inc.*, 376 P.3d 672, 691 (Cal. 2016) (Liu, J., concurring) (quoting William Rubenstein, *The Fairness Hearing: Adversarial and Regulatory Approaches*, 53 UCLA L. Rev. 1435, 1455 (2006)).

C. Any fee award should be decreased further because of class counsel's misleading fee petition.

An appropriate sanction for overinflating lodestar is to reduce the multiplier on the actual lodestar. "[I]t is absolutely imperative that attorneys submit honest and accurate fee petitions." *Young v. Smith*, 905 F.3d 229, 234 (3d Cir. 2018). If the only consequence from trying to claim more than what class counsel is entitled to is that class counsel will get what they would have been entitled to if they had filed a fair petition in the first place, there is no incentive to be forthright with a court in the original request. On the rare occasions they get caught, they are no worse off; if no objector investigates, they receive a windfall. If "the Court were required to award a reasonable fee when an outrageously unreasonable one has been asked for, claimants would be encouraged to make unreasonable demands, knowing that the only unfavorable consequence of such misconduct would

[17] The Court inquired whether *amici* could be compensated. Little law exists on this question, and none in the First Circuit, but some other circuits have found that *amici* could be compensated if appointed by a court and if the fee is "paid by the party responsible for the situation that prompted the court to make the appointment." *Morales v. Turman*, 820 F.2d 728, 731 (5th Cir. 1987); *see also Schneider v. Lockheed Aircraft Corp.*, 658 F.2d 835, 853 (D.C. Cir. 1981).

be reduction of their fee to what they should have asked for in the first place. To discourage such greed a severer reaction is needful." *Brown v. Stackler*, 612 F.2d 1057, 1059 (7th Cir. 1980); *see also First State Ins. Grp., v. Nationwide Mut. Ins. Co.*, 402 F.3d 43, 44 (1st Cir. 2005) (endorsing *Brown*). "A request for attorney's fees" is "not an opening gambit in negotiations to reach an ultimate result." *Lewis v. Kendrick*, 944 F.2d 949, 958 (1st Cir. 1991). An "outside-chance opportunity for a megabucks prize must cost to play." *Commonwealth Electric Co. v. Woods Hole*, 754 F.2d 46, 49 (1st Cir. 1985). Public policy and the law demand that there be material consequences for the assertion that lodestar is over $41 million when it includes $4 million of wholly imaginary double-billing and is inflated by at least another $9 million. In the face of excessive and misleading submissions, the Court has discretion to reduce hours across the board. *E.g., Cent. Pension Fund of the Int'l Union of Operating Engineers & Participating Employers v. Ray Haluch Gravel Co.*, 745 F.3d 1, 5 (1st Cir. 2014) (affirming a 33% across the board reduction for excessive billing); *cf. also Jacobson v. Persolve, LLC*, 2016 WL 7230873, at *6-7 (N.D. Cal. Dec. 14, 2016) (weighing counsel's disregard for the interests of absent class members in the fee calculus). Let the punishment fit the crime.

Class counsel will argue "But everyone does it," and that shows deterrence is necessary because it's so infrequently caught. If class counsel overstated their lodestar by $13 million, then their fees could be capped below lodestar minus the $13 million overstatement—otherwise, if class counsel is caught only half the time, they would come out ahead. And courts are surely failing to catch Class Counsel's overbilling half the time.

V. The hours submitted in this case may not be completely reliable, and additional scrutiny would be necessary to issue a fee award based on lodestar.

Should the Court wish to instead award fees on the basis of lodestar, a more careful review of the billing should be performed. District courts "should exclude" "hours that were not reasonably

expended" where cases are "overstaffed" and hours are "excessive, redundant or otherwise unnecessary." *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983).

The Special Master did not review the detailed bills line-by-line, and CCAF did not have enough resources to carefully scrutinize it, but several examples of excess billing are apparent:

- Obvious errors remain in the detailed hours, unacknowledged and uncorrected. For example, Lieff indicates that K. Gralewski billed 45 hours on March 5, 2013, which is included in her 1478.9 hour total. *See* Dkt. 401-248 at 33; Dkt. 104-17 at 8. This is an obvious data entry mistake, which Lieff apparently contends to be worth $16,807.50 as part of a lodestar crosscheck. Bednarz Decl. at 11.[18]
- As discussed in Section III.C, significant document review time was billed in the final months of the case before an agreement-in-principle was reached in June 2015. Furthermore, many staff attorneys continued frantically reviewing documents 7-10 days after the agreement-in-principle was reached (no later than June 21, 2015), which a sophisticated client would not tolerate. *See Citigroup*, *supra*.
- Labaton appears to have included many hours spent researching and preparing its own fee motion. Dkt. 401-264 at 466-67. In common fund cases, "fees on fees" are generally not permitted because they do not benefit the class. *See In re Fidelity/Micron Secs. Litig.*, 167 F.3d 735, 738 (1st Cir. 1999).
- Pure travel time is billed, which sophisticated clients generally do not tolerate. *See*, *e.g.*, Dkt. 401-258 at 51 ("Fly back to Los Angeles." 8 hours, at $1000/hour). "[T]ravel time

[18] Class Counsel will argued that the potential overbilling documented in this section makes no material difference to the lodestar crosscheck. For example, if the cited figure should actually be 4.5 hours instead of 45, it's a 40.5 hour mistake in a case with over 86,000 hours billed. While this is true, the continued existence of such trivial and frankly dumb errors calls the reliability of the lodestar total into question.

is widely recognized as less productive than regular time." *Automobile Club of New York, Inc. v. Dykstra*, No. 04-cv-2576 SHS, 2010 WL 3529235, at *3 (S.D.N.Y. Aug. 24, 2010) (reducing travel time rates by 50%).

As a general matter, 86,000 hours claimed in a five-year litigation, stayed for four-years, and settled on docket number 103 is unconscionable, even in a complex document-heavy securities case. *Contrast, e.g., In re IndyMac Mortgage-Backed Secs. Litig.*, 94 F. Supp. 3d 517, 527 (S.D.N.Y. 2015) (refusing to credit 55,372 billable hours claimed in a virtually-unstayed five-year litigation to be "eyebrow-raising") and eliminating 25% of discovery hours). If the Court would prefer to award attorneys' fees on the basis of lodestar (rather than as a percentage with lodestar cross-check), significantly more scrutiny should be given to the billing in this case, and the amicus hopes to file a supplemental memorandum if this occurs.

CONCLUSION

The underlying settlement created a $300 million megafund, and the vast majority of courts award substantially less than 25% for such a settlement to avoid providing a windfall to counsel. The now-vacated 25% attorneys' fee award would be especially inappropriate here given the other questionable conduct the Special Master uncovered.

The Court should base its final fee decision on what would have been a reasonable award in the absence of error or misconduct. Here, a rate of no more than 16.75% ($50 million) would not be too low, and perhaps too high. Such an amount more closely resembles the average fee award for a case of this size and—when contract and staff attorneys are appropriately billed at market rates—would deliver counsel a 1.82 lodestar multiplier which is higher than even they have indicated is appropriate. Indeed, this multiplier is slightly higher than the multiplier Class Counsel sought on the basis of fanciful rates and double-counting. More importantly, it more than fairly compensates counsel given that there was little risk when most hours were billed, and is especially generous in view of the

1.6 multiplier earned in *BONY Mellon*, where counsel bore significant risk and engaged in much less wasteful churn than in this case. The Court should apportion the fee award to each firm and then use this baseline to apply additional penalties recommended by the Special Master, to the extent the penalties are warranted.

Respectfully submitted,

Dated: November 20, 2018

/s/ M. Frank Bednarz

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CERTIFICATE OF SERVICE

I certify that on November 20, 2018, I served a copy of the forgoing on all counsel of record by filing a copy via the ECF system.

Dated: November 20, 2018

/s/ M. Frank Bednarz
M. Frank Bednarz

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiffs, 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, Plaintiffs, 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, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 12-cv-11698 MLW

DECLARATION OF M. FRANK BEDNARZ IN SUPPORT OF THE CENTER FOR CLASS ACTION FAIRNESS'S MEMORANDUM PROPOUNDING AN APPROPRIATE TOTAL FEE AWARD

DECLARATION OF M. FRANK BEDNARZ

I, M. Frank Bednarz declare as follows:

1. I have personal knowledge of the facts set forth herein and, if called as witness, could and would testify competently thereto.

2. I am an attorney licensed to practice law in the Commonwealth of Massachusetts and State of Illinois.

PREPARATION OF CORRECTED LODESTAR

3. In order to prepare a lodestar calculation using different rates, I had to determine how many hours each timekeeper has. In the case of timekeepers who were sometimes contract attorneys and later staff attorneys, I also had to determine the division of hours between those categories. Surprisingly, I could not locate any document in the record listing these hours. The only document that purports to show the alleged $37,265,241.25 lodestar and 2.01 multiplier appears to be Labaton Sucharow LLP's ("Labaton's") November 10, 2016 letter to the court, which does not show its work. Dkt. 116.

4. I tried my best to reconstruct the figures suggested by the November 20, 2016 letter. The letter identifies 17 billers listed on the fee declaration of both Thornton Law Firm ("TLF") and Labaton. For these timekeepers, the larger number of hours has been used and the hours assigned to TLF. The figures between the TLF and Labaton declarations vary dramatically. For example, Labaton's letter says that lodestars for certain attorneys "mistakenly were also reported in the Labaton . . . lodestar report," and that "[w]e have corrected these errors by removing the duplicative time" removing "the time billed at the higher rate." Dkt. 116 at 2-3. I am not sure Class Counsel did to reconcile disparate hours of attorneys like J. Grant and A. Vaidya, who are reported as having worked hundreds more hours for Labaton (1142.9 and 1056.4 respectively) than TLF (415.8 and 442.7), but apparently should have been billed by TLF exclusively.

5. The letter lists 6 billers on both TLF's and Lieff Cabraser Heimann & Bernstein LLP's ("Lieff's") declarations, but some of these listings were not in error—unlike the above group. I order to sort them, I treated each timekeeper based on what the November 20, 2016 letter suggested:

- The hours of two of these billers (A. McClelland and V. Weiss) on both TLF's and Lieff's has been assumed to be correctly billed by both firms;
- Corrected hours for two of the billers (C. Jordan and J. Zaul) have been used from a TLF letter to the Special Master (Dkt. 446-5), which includes hours for both firms;
- The final two billers "mistakenly . . . included in the Lieff Cabraser lodestar report" (A. Ten Eyck and R. Wintterle, Dkt. 116 at 2) have been listed under TLF alone, but with the higher hours indicated on Lieff's bill.

6. Finally, with respect to the four Lieff attorneys who sometimes paid as contract attorneys and later hired as staff attorneys (*see* Dkt. 446-7 at 12), the 2013 hours for L. Nutting and J. Bloomfield were determined by adding times from Lieff's detailed billing report. Dkt. 401-247. The remaining two attorneys have simply been treated as staff attorneys for all of their hours because the proportion of contract attorney hours is negligible. Again, this *overestimates* the appropriate lodestar for staff attorney time.

7. All of these adjustments should over-estimate the number of contract and staff attorney time. For one thing, these adjustments do not unwind the mysteriously misattributed time between S. Dolben and D. Fouchong that Class Counsel reported. Dkt. 116 at 2. The record does not seem to explain the nature of this error, nor how it could have occurred.

8. With these corrections, I arrived at a lodestar of $37,328,653.75, which is close, but not quite the same as the lodestar of $37,265,241.25 claimed by Labaton on November 20, 2016. My tally of hours evidently slightly overestimates the work claimed by Class Counsel, and so my lodestar calculation should be very slightly generous compared to the correct number of hours. By firm, this reconstructed lodestar is $13,357,235 – Labaton, $8,309,906 – TLF, and $8,967,149 – Lieff.

9. As explained in the memorandum, the rates for contract attorneys were set to $50/hour, and the rates for most staff attorneys were set to $200/hour, with the exception of a few who appeared to be doing supervisory work analogous to a midlevel associate. The other adjusted rates include:

- Todd Kussin, who seems to have been a supervising reviewer and was mentioned in many attorney—even partner—billing descriptions. He was assigned an appropriate midlevel rate of $375/hour.
- David Alper, who acted as an in-house subject-matter expert. While most of the work he performed also appears to be document review, for the sake of the lodestar crosscheck, he was also assigned a rate of $375/hour.
- Roger Yamada, who billed time for legal research and tasks besides document review, also assigned a rate of $375/hour for the sake of the cross-check.
- Joshua Bloomberg and Leah Nutting—who worked on the case as contract attorneys in 2013 (marked at $50), but appear to have been doing somewhat more advanced work sometimes when they returned to the case as staff attorneys in 2015. While not nearly as central as Mr. Kussin, for the sake of argument, their 2015 time was also valued at $375/hour.
- The rates of three apparent non-attorneys who supported document review functions was reduced to $375/hour, a rate appropriate for senior paralegals. These include Willow Ashlynn, Kirty Dugar, and Anthony Grant.

All adjusted rates are listed in the table below side-by-side with the rate Class Counsel proposed and applied for the purposes of the cross-check.

Timekeeper	Type	Hours	Orig. Rate	New Rate	New Lodestar	Change in Lodestar
Tanya Ashur	SA	843.5	$ 415.00	$ 200.00	$ 168,700.00	-$181,352.50
Joshua Bloomfield	SA	833.0	$ 515.00	$ 375.00	$ 312,375.00	-$116,620.00
Joshua Bloomfield	C	1200.2	$ 515.00	$ 50.00	$ 60,010.00	-$558,093.00
Elizabeth Brehm	SA	1682.9	$ 415.00	$ 200.00	$ 336,580.00	-$361,823.50

Timekeeper	Type	Hours	Orig. Rate	New Rate	New Lodestar	Change in Lodestar
Jade Butman	C	24.0	$ 515.00	$ 50.00	$ 1,200.00	-$11,160.00
James Gilyard	SA	882.0	$ 415.00	$ 200.00	$ 176,400.00	-$189,630.00
Kelly Gralewski	SA	1478.9	$ 415.00	$ 200.00	$ 295,780.00	-$317,963.50
Christopher Jordan	SA	540.0	$ 415.00	$ 200.00	$ 108,000.00	-$116,100.00
Jason Kim	SA	904.0	$ 415.00	$ 200.00	$ 180,800.00	-$194,360.00
James Leggett	SA	893.0	$ 415.00	$ 200.00	$ 178,600.00	-$191,995.00
Coleen Liebmann	SA	24.0	$ 415.00	$ 200.00	$ 4,800.00	-$5,160.00
Andrew Mcclelland	C	58.0	$ 415.00	$ 50.00	$ 2,900.00	-$21,170.00
Scott Miloro	SA	658.8	$ 415.00	$ 200.00	$ 131,760.00	-$141,642.00
Leah Nutting	SA	862.6	$ 415.00	$ 375.00	$ 323,475.00	-$34,504.00
Leah Nutting	C	1077.5	$ 415.00	$ 50.00	$ 53,875.00	-$393,287.50
Marissa Oh	SA	800.3	$ 515.00	$ 200.00	$ 160,060.00	-$252,094.50
Peter Roos	SA	780.0	$ 415.00	$ 200.00	$ 156,000.00	-$167,700.00
Ryan Sturtevant	SA	796.0	$ 415.00	$ 200.00	$ 159,200.00	-$171,140.00
Virginia Weiss	C	473.5	$ 415.00	$ 50.00	$ 23,675.00	-$172,827.50
Jonathan Zaul	SA	503.0	$ 415.00	$ 200.00	$ 100,600.00	-$108,145.00
Willow Ashlynn	RA	76.7	$ 360.00	$ 325.00	$ 24,927.50	-$2,684.50
Kirty Dugar	RA	290.5	$ 450.00	$ 325.00	$ 94,412.50	-$36,312.50
Anthony Grant	RA	25.0	$ 360.00	$ 325.00	$ 8,125.00	-$875.00
					Difference for all Lieff timekeepers:	-$3,746,640.00
Virginia Weiss	C	454.0	$ 415.00	$ 50.00	$ 22,700.00	-$165,710.00
Ann Ten Eyck	C	514.6	$ 425.00	$ 50.00	$ 25,730.00	-$192,975.00
Jonathan Zaul	SA	319.0	$ 415.00	$ 200.00	$ 63,800.00	-$68,585.00
Michael Bradley	SA	406.4	$ 500.00	$ 200.00	$ 81,280.00	-$121,920.00
Chris Jordan	SA	359.5	$ 415.00	$ 200.00	$ 71,900.00	-$77,292.50
Andrew McClelland	C	358.5	$ 415.00	$ 50.00	$ 17,925.00	-$130,852.50
Rachel Wintterle	C	580.6	$ 425.00	$ 50.00	$ 29,030.00	-$217,725.00
David Alper	SA	959.3	$ 425.00	$ 375.00	$ 359,737.50	-$47,965.00
Stephen Dolben	SA	420.9	$ 360.00	$ 200.00	$ 84,180.00	-$67,344.00
Debra Fouchong	SA	1133.9	$ 425.00	$ 200.00	$ 226,780.00	-$255,127.50
Dorothy Hong	SA	521.1	$ 425.00	$ 200.00	$ 104,220.00	-$117,247.50
Aron Rosenbaum	SA	545.6	$ 410.00	$ 200.00	$ 109,120.00	-$114,576.00
Comfort Orji	SA	646.2	$ 375.00	$ 200.00	$ 129,240.00	-$113,085.00
Albert Powell	SA	678.0	$ 410.00	$ 200.00	$ 135,600.00	-$142,380.00
Jason Saad	SA	480.7	$ 335.00	$ 200.00	$ 96,140.00	-$64,894.50
Roger Yamada	SA	184.0	$ 335.00	$ 200.00	$ 36,800.00	-$24,840.00
Ebone Bishop	SA	582.4	$ 335.00	$ 200.00	$ 116,480.00	-$78,624.00

Timekeeper	Type	Hours	Orig. Rate	New Rate	New Lodestar	Change in Lodestar
Nicole Cameron	SA	613.4	$ 335.00	$ 200.00	$ 122,680.00	-$82,809.00
Mashariki Daniels	SA	562.1	$ 335.00	$ 200.00	$ 112,420.00	-$75,883.50
Jacqueline Grant	SA	1142.9	$ 335.00	$ 200.00	$ 228,580.00	-$154,291.50
Anuj Vaidya	SA	1056.4	$ 335.00	$ 200.00	$ 211,280.00	-$142,614.00
Betsy Schulman	SA	274.0	$ 360.00	$ 200.00	$ 54,800.00	-$43,840.00
Ian Herrick	SA	660.3	$ 360.00	$ 200.00	$ 132,060.00	-$105,648.00
David Packman	SA	499.7	$ 360.00	$ 200.00	$ 99,940.00	-$79,952.00
Difference for all Thornton timekeepers:						-$2,686,181.50
Kaplan, B.	SA	535.8	$ 440.00	$ 200.00	$ 107,160.00	-$128,592.00
Greene, T.	SA	1118.2	$ 435.00	$ 200.00	$ 223,640.00	-$262,777.00
Flanigan, M.	SA	382.2	$ 435.00	$ 200.00	$ 76,440.00	-$89,817.00
George, L.	SA	269.1	$ 435.00	$ 200.00	$ 53,820.00	-$63,238.50
Pospischil, D.	SA	3765.4	$ 410.00	$ 200.00	$ 753,080.00	-$790,734.00
Watson, J.	SA	1054.0	$ 410.00	$ 200.00	$ 210,800.00	-$221,340.00
Bolano, M.	SA	858.7	$ 410.00	$ 200.00	$ 171,740.00	-$180,327.00
Kaiafas, G.	SA	323.7	$ 410.00	$ 200.00	$ 64,740.00	-$67,977.00
Hirsh, J.	SA	135.4	$ 410.00	$ 200.00	$ 27,080.00	-$28,434.00
Kussin, T.	SA	1245.5	$ 390.00	$ 375.00	$ 467,062.50	-$18,682.50
Griffin, J.	SA	803.2	$ 390.00	$ 200.00	$ 160,640.00	-$152,608.00
Tierney, A.	SA	150.2	$ 390.00	$ 200.00	$ 30,040.00	-$28,538.00
Abrahams, V.	SA	81.5	$ 390.00	$ 200.00	$ 16,300.00	-$15,485.00
Gianturco, D.	SA	1073.8	$ 360.00	$ 200.00	$ 214,760.00	-$171,808.00
Kirsh, Z.	SA	1036.9	$ 360.00	$ 200.00	$ 207,380.00	-$165,904.00
Pietrofesa, C.	SA	968.2	$ 360.00	$ 200.00	$ 193,640.00	-$154,912.00
Perez, O.	SA	3628.9	$ 335.00	$ 200.00	$ 725,780.00	-$489,901.50
Bernadin, F.	SA	2804.7	$ 335.00	$ 200.00	$ 560,940.00	-$378,634.50
Shrem, E.	SA	555.2	$ 335.00	$ 200.00	$ 111,040.00	-$74,952.00
Difference for all Labaton timekeepers:						-$3,484,662.00

10. I then applied these changes to each firm's lodestar, summarized in the following chart. CCAF's memorandum generously assumes a $50 million fee award for the sake of argument. While this is too generous in several respects, I believe it's important to assess an individual award for each

firm, and so in the right column I scaled up each corrected lodestar to give a total award of $50 million proportional to each firm's corrected lodestar.

Firm	Claimed Lodestar	Corrected Lodestar	Share of $50 Million
Labaton Sucharow LLP	$17,368,905.50	$9,872,573.00	$18,008,302.66
Thornton Law Firm LLP	$7,460,139.00	$5,623,724.50	$10,258,089.04
Lieff Cabraser Heimann & Bernstein LLP	$9,800,487.50	$5,220,509.00	$9,522,594.17
Keller Rohrback LLP	$2,561,287.00	$2,561,287.00	$4,671,976.75
McTigue Law LLP	$2,625,503.75	$2,625,503.75	$4,789,112.84
Zuckerman Spaeder LLP	$1,174,925.00	$1,174,925.00	$2,143,150.02
Richardson Patrick Westbrook & Brickman LLC	$137,411.00	$137,411.00	$250,647.82
Beins Axelrod PC	$187,712.00	$187,712.00	$342,400.56
Feinberg Campbell & Zack PC	$7525.00	$7525.00	$13,726.16
Total:	$41,323,895.75	$27,411,170.25	$50,000,000

11. While preparing these numbers, I had to tally several figures from the detailed hours of Class Counsel. *See* Dkts. 401-253 & -254 (TLF); 401-258 (Lieff); and 401-275 & -276 (Labaton). I notices some apparent errors in these records. For example, I notice that Labaton included significant time spent on their own fee application, which they have acknowledged was in error (Dkt. 401-173 at 36), but neither they nor the special master appears to have adjusted their lodestar for it. As another example, Kelly Gralewski is listed as having billed 45 hours on March 5, 2013, which is obviously impossible. Dkt. 401-258 at 33. At first, I thought this was a mere typographical error—perhaps a period was accidentally deleted when creating the table. But it turns out that all of Ms. Gralewski's hours including the 45 hours are necessary to total the 1478.9 hours claimed by Lieff. Dkt. 104-17 at 8. I also considered that the figure might be a late-reported result, like maybe a week worth of work reported at once, but this cannot be true either—Ms. Gralewski billed 4 hours on the 4th and 6th. The entry is therefore some sort of clerical error which nonetheless pads Lieff's lodestar by perhaps 40.5 hours (if the correct figure should have been 4.5 hours).

SAMPLE OF "$100-500 MILLION" CASES LISTED BY PROF. RUBENSTEIN

12. Prof. Rubenstein lists 20 cases he characterizes as being between $100 and $500 million as an exhibit to one of his declarations. *See* Dkt. 446-2, Ex. E. Because this is an unbiased selection of cases I did not create, I thought it would make a good non-cherry-picked sample to demonstrate the typical percentage awarded in a common fund the size of this case. As it turned out, two of the cases were outside the limit—one $95 million and another $1.133 billion—but overall the citations demonstrate that 25% is an unusually large percentage of a fund this size. The average of all 20 cases, including the outliers, is 13.16%. The citations, fund size, award size, percentage, and multiplier (if available) are shown in the table below.

Citation	Fund size ($M)	Award ($M)	%	Multiplier
1. *Dial Corp. v. News Corp*., 317 F.R.D. 426 (S.D.N.Y. 2016)	244	48.825	20%	2.01
2. *Fleisher v. Phoenix Life Ins*. Co., No. 11-CV-8405 (CM), 2015 WL 10847814 (S.D.N.Y. Sept. 9, 2015), ECF No. 310	130	13.5	10%	4.87
3. *In re Am. Int'l Grp., Inc. Sec. Litig*., 293 F.R.D. 459 (S.D.N.Y. 2013), ECF No. 634-23	115	15.238	13.25%	?
4. *In re Comverse Tech., Inc. Sec. Litig*., No. 06-CV-1825 (NGG), 2010 WL 2653354 (E.D.N.Y. June 24, 2010)	225	56.25	25%	2.78
5. *In re Currency Conversion Fee Antitrust Litig*., 263 F.R.D. 110 (S.D.N.Y. 2009)	336	51.25	15.25%	1.6
6. *In re High-Tech Employee Antitrust Litig*., No. 11-CV-02509-LHK, 2015 WL 5158730 (N.D. Cal. Sept. 2, 2015)	415	40.822	10%	2.2
7. *In re IndyMac Mortg.-Backed Sec. Litig*., 94 F. Supp. 3d 517 (S.D.N.Y. 2015)	346	31.469	9%	1.33
8. *In re Lupron Mktg. & Sales Practices Litig*., No. 01-CV-10861-RGS, 2005 WL 2006833 (D. Mass. Aug. 17, 2005)	95	23.75	25%	1.41
9. *In re Nortel Networks Corp*., No. 01-CV-1855 (RMB), 2002 WL 1492116 (S.D.N.Y. Feb. 4, 2002), ECF No. 194	1133.3	34	3%	2.04

10. *In re Schering-Plough Corp. Enhance Sec. Litig*., No. CIV.A. 08-2177 DMC, 2013 WL 5505744 (D.N.J. Oct. 1, 2013) ["Schering" settlement]	215	60.204	28%	1.34
11. *In re Schering-Plough Corp. Enhance Sec. Litig*., No. CIV.A. 08-2177 DMC, 2013 WL 5505744 (D.N.J. Oct. 1, 2013) ["Merck" settlement]	473	80.031	16.92%	1.3
12. *In re Shop-Vac Mktg. & Sales Practices Litig*., No. 2380, 2016 WL 7178421 (M.D. Pa. Dec. 9, 2016)	174.25	4.25	2%	0.918
13. *In re The Mills Corp. Sec. Litig*., 265 F.R.D. 246 (E.D. Va. 2009)	202.75	36.495	18%	1.3
14. *In re Volkswagen & Audi Warranty Extension Litig*., 89 F. Supp. 3d 155 (D. Mass. 2015)	116.62	15.468	13%	2
15. *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr*., No. 15-CV-1113 (VAB), 2016 WL 6542707 (D. Conn. Nov. 3, 2016)	107	0.8	1%	2.77
16. *N.Y. State Teachers' Ret. Sys. v. Gen. Motors Co*., 315 F.R.D. 226 (E.D. Mich. 2016)	300	21	7%	1.9
17. *New England Carpenters Health Benefits Fund v. First Databank, Inc*., No. CIV.A. 05-11148PBS, 2009 WL 2408560 (D. Mass. Aug. 3, 2009), ECF No. 769	350	70	20%	8.3
18. *Nitsch v. DreamWorks Animation SKG Inc*., No. 14-CV-04062-LHK, 2017 WL 2423161 (N.D. Cal. June 5, 2017)	150	18.537	9%	?
19. *Pennsylvania Pub. Sch. Employees' Ret. Sys. v. Bank of Am. Corp*., 318 F.R.D. 19, 23 (S.D.N.Y. 2016)	335	41.34	9%	1.2
20. *Shapiro v. JPMorgan Chase & Co*., No. 11 CIV. 7961 CM, 2014 WL 1224666 (S.D.N.Y. Mar. 24, 2014)	236	18	8%	3.05
Averages:	284	34	13.16%	2.35

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

Executed on November 20, 2018, in Chicago, IL.

M. Frank Bednarz
M. Frank Bednarz

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

Plaintiff,

No. 11-cv-10230-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.
_____/

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

Plaintiffs,

No. 11-cv-12049-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.
_____/

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

Plaintiffs,

No. 12-cv-11698-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.
_____/

SPECIAL MASTER'S FURTHER RESPONSE TO THE COURT'S DIRECTIVES AT THE NOVEMBER 7, 2018 HEARING AND IN ITS NOVEMBER 8, 2018 ORDER

At the November 7, 2018 hearing, the Court directed the parties, including the Special Master, to address certain issues of interest to the Court in addition to responding to the objections raised by Lieff Cabraser Heimann and Bernstein and the Thornton Law Firm. The Court highlighted its concerns about: (1) the meaning of the language that the rates submitted on the fee petition were the "regular rates charged" by the attorneys involved in the State Street case; and (2) the reasonable percentage of attorneys' fees that should be awarded from a common fund of $300 million. 11/7/18 Hrg. Tr., pp. 103: 8-18; 105: 23- 106:2. The Court also directed the Special Master to address "whether, when, and how notice should be provided to the class." Dkt. # 518, p. 2.

I. The references to "regular rates charged" is imprecise as to the majority of Plaintiffs' Counsel and blatantly inaccurate as to Thornton.

From the beginning, the Court has expressed great concern that the language used by several of Plaintiffs' Counsel in their respective fee petitions[1] – that the rates listed are "the same as my firm's regular rates charged for their services, which have been accepted in other complex class actions" – may be misleading or inaccurate. *See* 3/7/17 Hrg. Tr., pp. 11:22- 12:2; 28: 23- 29:3; 74: 2-6; 79/; 1-8; 11/7/18 Hrg Tr., pp. 105: 23- 106: 2. This statement originated with Labaton, who circulated this proposed language as part of the model fee declaration but was readily adopted by most of the law firms seeking a fee in the State Street case. *See* Dkt. 357, pp. 57-58.

The obvious question raised – and the focus of the Court's concern – is whether the firms making this representation actually charged, or billed, this rate to paying clients invoiced on a

[1] On the Customer Class side, Labaton, Lieff, and Thornton used this language verbatim, which originated from the model fee declaration circulated by Labaton's Settlement Counsel, Nicole Zeiss. *See* R&R, pp. 57-58. On the ERISA side, Keller Rohrback, Richardson Patrick, and Feinberg, Campbell & Zack, P.C. used the same, or substantially similar in the case of Feinberg, Campbell, language. *See also* R&R pp.. 40-42, 119 (reciting revised language used by McTigue Law Firm, Zuckerman Spaeder, and Beins Axelrod).

periodic basis. The Special Master's investigation revealed that all but one of the firms had some paying clients, although the volume of paying clients varied considerably among firms. For example, Lieff maintains a non-contingent fee practice. *See* LCHB 6/9/17 Response to SM's First Interrogatories (No. 63), attached as Exhibit A. Labaton has had a few paying clients over the years but the overwhelming majority of the firm's clients retain it on a contingency basis. Labaton's 6/9/17 Response to SM's First Interrogatories (Nos. 45 & 71), attached as Exhibit B. Thornton performs the majority of its work on a contingency basis and "virtually never" charges clients on an hourly basis. *See* TLF's 6/9/17 Responses to the SM's First Set of Interrogatories (No. 49) [attached as Exhibit C] and 6/19/17 M. Thornton's Dep., pp. 82: 11- 83:7., Dkt. # 357, Ex. 2.[2]

In his Report, the Special Master took special exception to the use of the phrase "regular rates charged" by Labaton and Thornton in describing the frequency with which it held out the hourly rates listed on their respective fee petitions. While Labaton had some paying clients, non-contingency work was by no means a "regular" part of their practice. Thornton, moreover, had no paying clients and did not have regular rates for the staff (and "rented" agency) attorneys employed by Lieff and Labaton *whom it had never previously employed or included on a Thornton fee petition*. 10/15/18 Hearing Tr, p. 24, 1-3. Thus, it is somewhat disingenuous for Labaton – and wholly misleading for Thornton – to assert that hourly rates submitted in other fee petitions are the regular rates charged for their service. *See* Dkt. # 357, p. 58, n.44. But even as to Lieff, the Special Master concluded that greater transparency is necessary to educate the Court as

[2] While the ERISA Firms were not the Special Master's focus, the Master did inquire as to whether any of the ERISA Firms had paying clients. Lynn Sarko (7/6/17 Sarko Dep., pp. 95: 23 – 96: 4, Dkt. # 357, Ex. 28), Karl Kravitz (7/6/17 Kravitz Dep., p. 88: 19-25, Dkt. # 357, Ex. 21), Brian McTigue (7/7/17 McTigue Dep., pp. 83:19-84:3, Dkt. # 357, Ex. 11), and Beins Axelrod (7/7/17 Axelrod Dep., pp. 47:24 – 48:7, Dkt. # 357, Ex. 39) all testified that they had paying, hourly clients as part of their practice. Only Michael Brickman had no non-contingent clients. 7/17/17 Brickman Dep., pp. 41:24 – 42:10, Dkt. # 357, Ex. 40.

to the source of the fees requested. The Special Master points to Zuckerman Spaeder and Beins Axelrod as examples of far more precise and accurate language that removes any doubt as to the basis for the rates submitted. *See* R&R Exs. 92, 94.

While the Special Master strongly encourages the plaintiffs' bar, particularly in class actions, to revise language such as that submitted in the fee petition to be not only completely accurate, but fully disclosive of the origins of the rates sought, the Special Master does not recommend any specific sanction against Lieff and Labaton for the use of this imprecise and inexact language. After undergoing such particularized scrutiny, these firms are surely now on notice of the level of exactness required by the Courts to fully discharge their fiduciary duties to the class. As to Thornton, the Special Master has found that Garrett Bradley's Declaration was misleading and inaccurate in numerous respects – including whether the rates listed were regularly charged or were even associate with members of Bradley's firm – and has recommended appropriate sanctions and redress. *See* Dkt. # 357, pp. 176-209; 219-245; 362-374.

II. The fee award of approximately $75 million (or roughly 25% in this case) is appropriate to compensate Plaintiffs' Counsel for the hard-fought litigation and does not represent a windfall, particularly in light of the laudable settlement. However, given the conduct discovered during the Special Master's investigation by some of the firms, this fee is just a starting point that must be adjusted to redress that conduct.

The Court has further inquired whether the appropriate benchmark for a percentage-of-fund calculation should be less than the typical 20-30% range applied in class actions cases generally. The issue reflects a concern voiced by the Competitive Enterprise Institute's ("CEI" 's) contention that courts routinely award *less* than 25% (the approximate percentage applied by the Court here) in a "mega-fund" case of this size. While a $300-million-dollar settlement is a large recovery, it is far from a "super mega fund" comprised of billions of dollars, and in the

context of the protracted and hard-fought State Street case, applying the traditional percentage of fee range does not yield a windfall to the attorneys who litigated the case.

In its simplest terms, the mega-fund approach conveys that courts should award lower fee percentages in large fund cases. But this notion of a sliding scale is not blackletter law and has not been uniformly adopted by the Courts of Appeal. *See, e.g., In re Synthroid Marketing Litigation*, 264 F.3d 712, 718 (7th Cir. 2001) (remanding the district court's decision because the district court implemented a "mega-fund cap"); *In re Checking Account Overdraft Litig*., 830 F. Supp. 2d 1330, 1367 (S.D. Fla. 2011)(collecting cases awarding fees of 30% or higher in so-called mega-fund cases). Even where courts have applied a mega-fund discount or cap, the actual percentage varies considerably from case to case. *See Carlson v. Xerox*, 596 F.Supp.2d 400, 405-407 (2009)(summarizing the Top 26 post-PSLRA settlements at the time showing a range from 1.73% to 28%). Importantly, even within the mega-fund context, it is not a one-size fits all approach. In three separate cases addressing the appropriate fee *in a $300 million award*, courts imposed 3.96%, 22.28%, and 28% respectively. *See Carlson*, 596 F. Supp. 2d at 405, citing *Oxford*, *DaimlerChrysler*, and *Bristol-Myers Squibb*.

Even if the Court applied a mega-fund cap, or adopted a sliding scale, to adjust downward the percentage-of-fee awarded to reflect a $300 settlement, the $75 million requested by Plaintiffs' Counsel does not run afoul of the Court's concerted efforts to ensure counsel do not receive a windfall in a large settlement such as the recovery reached in this case. *See e.g., In re Neurontin Marketing and Sales Practices Litigation*, 58 F.Supp.3d 167, 170 (D. Mass. 2014); *In re Bluetooth Headset Productions Liability Litigation*, 654 F.3d 935, 942 (9th Cir. 2011) ("where awarding 25% of a 'mega-fund' would yield windfall profits for class counsel in light of the hours spent on the case, courts should adjust the benchmark percentage or employ the

lodestar method instead."); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96 (2d Cir. 2005); *In re Citigroup Inc. Bond Litigation*, 988 F.Supp.2d 371, 375 (S.D.N.Y. 2013). In fact, at least one district court judge tasked with approving attorneys' fees drawn from a common fund settlement, guided by cases distinguishing mega-funds with a value over $100 million, adopted a graduated scale to ensure that counsel do not receive a disproportionate share of a fund – "it is not ten times as difficult to prepare, and try to settle a 10 million dollar case as it is to try a 1 million dollar case." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.,* 991 F. Supp. 2d 437, 445 (E.D.N.Y. 2014). Even this sliding scale approach – a corollary to the mega-fund cap construction – deems reasonable a 20% award for common fund settlements between $100 million and $500 million.

Finally, even where Massachusetts courts have embraced the concept of lowering a fee award to avoid giving attorneys a windfall at the plaintiffs' expense, courts have deemed reasonable awards just under the 25% of the common fund approved here. *See New England Carpenters Health Benefits Fund v. First Databank, Inc.*, No. 05–11148–PBS, 2009 WL 2408560, at *2 (D. Mass. Aug. 3, 2009)(approving 20% fee award in $350 million settlement litigated by counsel in a complex and hard-fought litigation). But, unlike *First DataBank*, counsel in this case were pioneers bringing the first private action against a bank based on FX-related claims. *See* R&R, pp. 10-13, 153.

Here, Plaintiffs' Counsel received $ 74,541,250 in attorneys' fees and $1,257,699.94 in expenses, representing 24.48% of the total settlement. The Special Master reiterates that, in view of the legal risks and uncertainty of bringing the State Street case – and the favorable settlement achieved – the $75 million fee award is reasonable. *See* Dkt. # 357, pp. 6; 245-246. As the Special Master described in greater detail in his Report, Plaintiffs' Counsel ran the risk that they

would receive no compensation should State Street have prevailed at the Motion to Dismiss stage, or if the case proceeded to trial and the jury found in favor of State Street. Quite simply, there were no guarantees.

In contending that courts routinely award less than 25% in cases with settlement amounts exceeding $300 million, CEI substantially distorts the results of a single empirical study. The study upon which CEI relies, the *Attorney Fees and Expenses in Class Action Settlements: 1993–2008*, shows that between 1993 and 2008, as reported in 68 cases greater than $175 million, the average fee percentage awarded totaled 12%. However, with a standard deviation of 7.9%, courts in a majority of the cases likely awarded a percentage recovery ranging from 4% and 20%. *See* Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993–2008,* 7 J. EMPIRICAL LEGAL STUD. 248, 265 tbl. 7 (2010) (reporting a standard deviation of 7.9% in approximately 68% of cases). This statistic is far from determinative. Similarly, CEI's citation to 10.2% median fee for mega-fund cases signifies only that, out of the pool of 68 cases exceeding $175 million, the middle data point equals 10.2%. Without access to the full data set, this isolated statistic is meaningless. The percentage of fund is, of course, only a starting point in the Court's calculation of an appropriate fee award, and the Court should consider the entirety of the circumstances surrounding a fee petition.

In sum, the 25% percentage-of-fund calculation is appropriate here, but only as a starting point. The various disgorgements and remedies recommended by the Special Master are balancing off-sets that address the conduct of each of the firms, as well as the Court's fiduciary duty to the class.

III. The Court should notify the class in writing of the status of the parties' entitlement to attorneys' fees in this matter, including the status of any party who has fully resolved its issues before the Court, prior to holding an evidentiary hearing in this case.

While the Special Master has, throughout his investigation – but even more so in the post-Report stage where the Customer Class firms have become largely adverse to the class by advocating to keep money awarded to them in attorneys' fees out of the common fund – been cognizant of how his recommendations emerging from the Report investigation may affect the rights of the absent class members, there is no substitute for directly informing the class about recent events in this case. It has been more than two years since the Court granted "final approval" for a $75 million attorneys' fee award at the Final Approval Hearing. Since then, the fee award has been vacated, and the Law Firms that once litigated on behalf of the absent class members have now assumed positions that, in some instances, pit them directly against the interests of the class.

The Special Master defers to the Court as to when it is most appropriate to send written notice to the class of the parties' status as contesting or, in some instances, agreeing with the recommendations made by the Special Master. The Special Master points out, however, that some notice to the class in advance of an evidentiary hearing is necessary to ensure that absent class members who may be uninformed as to the positions recently taken by the Law Firms have the opportunity to properly object to the positions taken by the parties, including those asserted by the Special Master, or, at the very least, attend a public hearing so as to be informed of the issues.

While the Court has indicated that it views Labaton's Lead Counsel role as limited to "administrative" responsibilities, the Special Master does not view either the drafting of a notice to the class, subject to the Court's review and approval (perhaps with input from the Special

Master), or the oversight of delivery of written notice to all available class members through a combination of direct email and posting the notice publicly on the class settlement website, as outside the solely administrative role which the Court has identified for Labaton.

Dated: November 20, 2018

Respectfully submitted,

SPECIAL MASTER HONORABLE GERALD E. ROSEN (RETIRED),

By his attorneys,

/s/ William F. Sinnott

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/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,

No. 11-cv-10230-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,
Defendant.
_____/

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

No. 11-cv-12049-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,
Defendant.
_____/

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

No. 12-cv-11698-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,
Defendant.
_____/

SPECIAL MASTER'S PARTIALLY REVISED REPORT & RECOMMENDATIONS SUBMITTED IN RESPONSE TO LIEFF CABRASER HEIMANN & BERNSTEIN'S OBJECTIONS[1]

[1] The Special Master herein references and incorporates the Special Master's Partially Revised Report and Recommendations Submitted in Response to the Thornton Law Firms' Objections, filed simultaneously with the Court. Lieff and Thornton both argue that the Special Master erred in recommending (1) the disgorgement of the $4.1 million double-counted lodestar; and, (2) that contract attorneys should be treated as an expense and billed at cost. *See* Thornton Law Firm's Objections to the Special Master's Report and Recommendation's ("***Thornton Objs.***"), pp. 11-25; 78-83. Thus, the Special Master addresses each argument separately, but, for the sake of brevity, incorporates his responses to Thornton's Objections in responding to Lieff, as set forth below.

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I. Introduction

On May 14, 2018, the Special Master filed his Report and Recommendations, and exhibits thereto, under seal ("Report"). Dkt.# 357. Among other topics, the Report addressed the accuracy and reliability of the fee petition submitted by Plaintiffs' Counsel in *Arkansas Teachers' Retirement System v. State Street, et. al.,* No. 11-cv-10230 ("State Street"). On June 29, 2018, Lieff Cabraser Heimann & Bernstein ("Lieff") filed detailed objections to the findings of fact, conclusions of law, and recommendations made in the Report.[2]

On August 10, 2018, the Court resubmitted to the Master his Report, directing him to amend, or to make revisions to, the Report that may have been occasioned by the firms' objections and exceptions. *See* Dkt. # 445; 8/9/18 Hrg. Tr., pp. 45:21-46:5. In late August, while Lieff's, and all counsel's, objections remained pending, the Special Master – prompted by a conversation initiated by Labaton – took steps to determine if a global resolution with all firms was viable. With the Court's approval, the Special Master invited all firms to attend an all-day meeting in Boston to further explore the possibility of a global resolution. The Master was not able to reach agreement with Lieff and Thornton consistent with his understanding of his responsibilities to the Court, and therefore, Lieff's and Thornton's objections remained outstanding and required response from the Special Master.

On October 16, 2018, the Court directed the Special Master and Lieff to confer as to whether they could agree to narrow the scope of the issues remaining in dispute. *See* Dkt. # 494. No progress was made toward limiting the objections, and in response to an issue raised by

[2] In addition to Lieff, the other Customer Class Counsel filed written objections shortly after the Court unsealed the Report and Recommendations. *See* Dkt. # 359 (Labaton's Objections) and Dkt. # 361 (Thornton's Objections). The ERISA Firms subsequently filed written exceptions to Labaton's Objections contesting, mainly, the payment of additional monies to the ERISA Firms. *See* Dkt. # 387; Dkt. # 398; Dkt. # 392.

Thornton in its own objections, the Special Master, as anticipated by the Court's resubmission of the Report back to him, identified an additional area of concern relating to the accuracy of Lieff's petition. The Special Master put Lieff on notice of his intention to address this fourth issue – namely, Lieff's representation that attorneys employed by third-party staffing agencies, and included on Lieff's lodestar and in the fee petition, were "employees" of the firm, as stated in Lieff's declaration supporting the fee petition. *See* Dkt. # 503; Dkt. # 357, pp. 211-213.

After conferral, three core areas of dispute remained:

1. Whether Lieff should disgorge or forfeit some portion of the roughly $4.1 million of overstated lodestar, and if so, how much?

2. With regard to the contract attorneys,[3] whether the contract attorneys' time should be treated as an expense rather than a legal fee [entitled to a market mark-up and multiplier] as reported on the attorney lodestar, and if treated as an expense, whether Lieff should disgorge or forfeit the total [claimed] contract attorney lodestar, with or without a lodestar multiplier?[4]

3. Whether Daniel Chiplock's Declaration [Dkt. # 104-17] accurately describes the employment status of the work performed in the State Street case by contract attorneys employed by a third-party staffing agency?

On November 7, 2018, in response to the parties' recitation of the above-described topics, the Court added a fourth topic for Lieff to address in its reply to the Special Master's objections (*see* 11/7/18 Hrg. Tr., pp. 101:15 - 102:13) (Dkt. # 519):

4. Why the Special Master was correct (or incorrect) in determining that the rates charged for staff attorneys[5] was reasonable?

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[3] As he did in his Report, the Special Master distinguishes "contract" attorneys employed by third-party staffing agencies from "staff attorneys," who are full-time employees of the firm and eligible to receive benefits. "Contract attorney" herein refers to the former.

[4] Bracketed language connotes additional clarifications to the list of issues submitted to the Court on October 25, 2018. Dkt. # 503.

[5] At the hearing, the Court directed Mr. Heimann, General Counsel from Lieff, to address in his reply why the Master was *correct* that "a reasonable rate was used for the staff attorneys." 11/7/18 Hrg. Tr., p. 102: 10-13. In issuing this instruction, the Court did not make a distinction between" staff attorneys," such as those employed full-

II. Relevant background relating to Lieff Cabraser's receipt of attorneys' fees from the State Street fee award.

On March 8, 2017, the Court appointed the Hon. Gerald E. Rosen (ret.) to investigate the accuracy and reliability of the fee petition submitted in the State Street case seeking $75 million[6] in attorneys' fees ("Appointment Order"). Dkt. # 173. The Special Master's appointment was prompted, in large part, by a December 2016 article in the *Boston Globe* following the submission of a letter by Customer Class Counsel (Labaton Sucharow, Lieff Cabraser Heimann & Bernstein, and the Thornton Law Firm) on November 10, 2016 disclosing an error on the fee petition caused by double-counting certain hours performed by staff attorneys employed by Lieff and Labaton ("November 10, 2016 Letter"). *See id*, pp. 1-3. The *Boston Globe* article focused on, among other issues, the large mark-up on contract attorneys.[7]

Over the ensuing fourteen months, the Special Master engaged in informal interviews with nearly all of the attorneys involved in the mediation and settlement of the case, and in particular, those individuals who prepared the fee petition, and memorialized this testimony through the formal discovery process. *See* Dkt. # 357, p. 138. While the discovery of a $4.1 million payment to Texas Attorney Damon Chargois significantly expanded the landscape of the Master's investigation, the substantive issues pertaining to Lieff remained largely discrete.

Prompted by concerns expressed by the Court during the March 7, 2017 hearing, the Special Master focused on the role played by the staff attorneys in the underlying litigation as well as the nature and origin of the arrangement among the Customer Class firms to share the

time by Lieff and Labaton, and "contract" or "agency" attorneys, employed by a third-party staffing company and for whom firms, such as Lieff, reimburse the agency on an hourly basis.

[6] The original fee petition sought $74,541,250.

[7] The *Boston Globe* article did not differentiate between staff attorneys actually employed by the firm and contract or agency attorneys employed by outside staffing agencies.

costs of the staff attorneys. As a result of this inquiry, the Special Master learned that a majority of the attorneys listed as "staff attorneys" were, in fact, full-time employees of their firm – with a minority being "contract" attorneys employed by a third-party staffing agency but who were retained by Lieff and for whom Lieff and Thornton compensated the agency on an hourly basis.

Another topic raised by the Court was the accuracy and reliability of the representations made on the fee petition, which includes those statements concerning Lieff and Labaton staff attorneys (which encompasses the contract attorneys retained by Lieff) who were included in the overall lodestar submitted in the State Street case. In particular, the Special Master analyzed the substantive work performed by the staff attorneys, the market for those services, and the value the staff attorneys added to the overall case. As it pertains to the legal work performed by the staff attorneys, the Special Master was further charged with determining whether the fee petition accurately described the scope and nature of the work by the staff, contract, and other attorneys listed on the lodestar.

On May 14, 2018, the Special Master submitted his Executive Summary, Report and Recommendations, and exhibits thereto, under seal. Dkt. # 357. As it relates to Lieff, the Special Master reached two important legal conclusions: (1) that Lieff contributed to, and therefore, shared responsibility for, the double-counting errors resulting in an overstated lodestar; and (2) that Lieff – or any firm – should not be entitled to claim the hours performed by contract attorneys as generally-accepted legal fees on its lodestar, but are entitled to reimbursement of those hours as expenses. Accordingly, the Special Master recommended that (1) the Customer Class firms, including Lieff, should repay the full amount of the overstated lodestar, 9,322.9 hours totaling $4,058,000 to the class, with each firm being responsible for paying one-third, or $1,352,666.67, of that amount (Dkt. # 357, pp. 363-364); and, (2) the entirety of the contract

attorneys' lodestar, plus the overall multiplier yielded $2,241,098.40[8], less a reasonable expense of $50 per hour for each hour performed, should be disgorged and returned to the class. Dkt. # 357, pp. 158-189; 367-368.

The Report did not, however, squarely address the accuracy of Dan Chiplock's Declaration, submitted to the Court on behalf of Lieff, which describes the amounts presented on the firm's individual lodestar as "time spent by each attorney and professional support staff-member *of my firm* who was involved in the prosecution." Dkt. # 357, Ex. 89. (emphasis added). Importantly, the Chiplock Declaration further states that "[t]he hourly rates for the attorneys and professional support staff *in my firm* [] are the same as my firm's regular rates charged for their services." *See id* (emphasis added). In its written objections, Thornton points out that the contract attorneys listed on Lieff's fee petition were not employed by Lieff, and, in light of this fact, insinuates that the Chiplock Declaration is not entirely accurate. *See* Thornton Objs., pp. 47-48. Given that the Special Master has focused on the accuracy of Garrett Bradley's Declaration, and in particular on similar (but, in context, not identical) representations made to the Court, it is only fair that the Special Master also addresses this additional concern, first raised by Thornton. This is the third issue previewed for the Court at the November 7 hearing and addressed is below.

III. Pursuant to Fed. R. Civ. P. 53(f)(1) and the Court's order, the Special Master has discretion to revise his Report and Recommendations as well as address new matters arising in the post-Report stage.

The Special Master, of course, is not bound by the factual findings in the Report. This is illuminated in the Court's August 10, 2018 order resubmitting the Report to the Special Master,

[8] For purposes of responding to Lieff's Objections, the Special Master uses, and accepts as true, the 2899.4 total hours calculated by Lieff, and the firm's corresponding $2,241,098.40 figure rather than the $2,386,058 figure stated in the Report and Recommendations.

as well as its direction to the Master address the firms' objections and other areas of concern. *See* Dkt. # 445.[9] In resubmitting the Report to the Special Master, the Court cited to Fed. R. Civ. P. 53(f)(1), which permits the Court to "resubmit [a Report] to the master with instructions." Fed. R. Civ. P. 53(f)(1). Federal courts that have availed themselves of Rule 53(f)(1) routinely do so alongside additional instructions and areas of focus. *See e.g., D.C. v. Department of Educ.*, 2008 WL 2902079, *7, 10 (D.HI Jul 25, 2008)(ordering the special master to recalculate attorneys' fee award based on the court's criteria); *Buchillon v. Same Deutz-Fahr*, 2017 WL 496078,*4 (N.D. Miss. Feb. 2, 2017)(resubmitting report to the special master for clarification regarding issues and objections filed by the parties). Given the Court's direction, the Special Master now revisits its factual findings and legal conclusions as to Lieff.

While the Court has instructed the Master specifically to address the Law Firms' remaining objections (*see* Dkt. # 455, p. 2), including the proper rate for calculating the lodestar for the contract attorneys and whether a multiplier should be applied to any disgorgement of the original lodestar, the Court did not limit the Special Master *or* the firms to the four corners of the Law Firms' written objections. Rather, the post-Report stage has proven to be an iterative process and one that has prompted the Court, from time to time, to identify several new issues, such as the reasonableness of staff attorney rates – a topic not in dispute by the parties – and what is a reasonable percentage of a $300 million common fund, as well as other issues emerging since the Court vacated the attorneys' fee award in this case. *See* 11/7/18 Hrg. Tr., p. 99: 16-21; p. 102: 2-8; p.103, 7-13. In short, the Court has not limited the Special Master to

[9] At the August 9, 2018 hearing, the Court ordered, pursuant to Rule 53 and Rule 24(h)(4), that the Special Master's Report and Recommendations be resubmitted to the Special Master to respond in writing to the then-pending objections of the Customer Class Counsel, to participate in oral argument at a hearing, and have the opportunity to question witnesses if an evidentiary hearing is held. The Court also indicated the Master could perform any related tasks with the Court's permission. 8/9/18 Hrg. Tr., pp. 45:21 - 46:14.

reaffirming verbatim his factual findings should the Special Master wish to revisit those factual findings along with his conclusions of law and recommendations.

IV. Because Lieff's actions in the State Street case directly contributed to the submission of $4.1 million in overstated lodestar, the Special Master continues to recommend that Lieff forfeit one-third of the double-counted lodestar and pay it back to the class.

On one thing the Special Master and Lieff agree – that the double-counting of staff attorney lodestar was inadvertent, although clearly it was the product of an ill-conceived concept of allowing the employees (and contract attorneys) of one firm to get paid by, and put on the lodestar of, another firm. But inadvertence does not guarantee the Customer Class firms a free pass. It is axiomatic that the Court relies heavily on the fee petitions submitted by attorneys in support of their fee award when granting fees to attorneys paid out of a common fund. Because it would lead to a significant drain on judicial resources, it is impossible for the Court to scrutinize individual attorney hours and lodestar. This makes it even more critical for law firms to submit accurate and reliable lodestars for the Court's consideration. Unfortunately, due to a myriad of circumstances, the collective lodestar originally presented to the Court was patently inaccurate and included $4,058,000 worth of attorney time not actually expended.

In investigating the circumstances that led to the double-counting, the Special Master stands on different ground than a trial judge reviewing a petition for the first time. Here, the Court appointed the Special Master not simply to recalculate the lodestar or applied multiplier, but to investigate "all issues that have emerged concerning the court's award of more than $75,000,000 in attorneys' fees, expenses, and service awards" and recommend appropriate redress. Dkt. # 173, pp. 1-3. After extensive investigation of the underlying facts and circumstances, the Special Master recommended that the $4.1 million, representing the overstated lodestar, be paid back to the class as an equitable remedy tailored to make the class

whole and to discourage future name-and-cost sharing agreements, that pose such risk, in the future.

Lieff's argument that the Court should not direct the firm to disgorge the recommended $1,352,667.66, is two-fold. First, Lieff argues that disgorgement of the double-counted lodestar amount is inconsistent with the function of the lodestar cross-check as a check on reasonableness. Second, to the extent that the firm has not already suffered enough financially from this mistake, Lieff argues that it is far less culpable than Labaton and Thornton, and, at most, should pay a percentage commensurate with its relatively-minor role in the double counting and consistent with its share of the fee award. Lieff Cabraser Heiman & Bernstein's Objections to the Special Master's Report and Recommendations ("***Lieff Objs.***"), pp. 74-77.

A. The Special Master's recommendation that Lieff disgorge $1,352,666.67 is in addition to a lodestar cross-check and tailored to address the firm's failure to provide accurate information to the Court, which may have resulted in the award of a lesser fee to Plaintiffs' Counsel and a greater recovery for the class, as well as to deter further mistakes.

Lieff takes great exception to the Special Master's recommendation that the Customer Class firms be disgorged dollar-for-dollar the full *amount* of the overstated lodestar. Lieff Objs., 68-73. While it is true that Lieff was not paid by the class on an hourly basis, Lieff's repeated emphasis on the literal mechanics of disgorgement causes the firm to overlook the equitable tasks delegated to the Special Master, particularly in the context of reviewing, after the fact, the reasonableness of a fee award that, admittedly, does not accurately represent the work performed on the case. Forfeiture of an amount equal to the lodestar erroneously reported on the fee petition recognizes that those overstated hours should not have been included in the first place, and also seeks to deter firms from making such material mistakes in preparing future fee petitions.

i. *The Special Master's forfeiture recommendation is not intended to replace a percentage-of-fund calculation or lodestar cross-check, but is an equitable remedy tailored to address the magnitude of the error and need for deterrence.*

The Special Master is not intending to impose a substitute for the District Court's fee award. The Special Master, rather, he is tasked with evaluating the entirety of circumstances giving rise to an errant fee request and determining how best to address what has emerged as patently inaccurate information. And he does so, now, on a blank slate after the Court vacated the original $75 million fee award. In evaluating the reliability of countless hours and entries, special masters retain discretion to reduce fee awards across-the-board and balance the equities. The Special Master, here, is not limited to correcting a specific "wrong," such as an overbilled event or timekeeper,[10] but, accomplishes the larger goal of rough justice. To be sure, the bounds of rough justice are not confined to recommending "haircuts" to a fee, but may include disgorgement of a portion of the fee if necessary to correct a deficiency in the fee petition. *See, e.g., Ohio- Sealy*, 776 F.2d 646, 657 (7th Cir, 1985) (while percentage reduction of fee award did not constitute an impermissible penalty, preference is for a recommended disgorgement.) Regardless of the vehicle for reduction, the outcome reached through this process is the same – a lesser fee that is more appropriately tethered to the work performed or the outcome in the matter. *See Copeland v. Marshall*, 641 F.2d 880, 891–92 (D.C.Cir.1980)(no need for district court to perform an item-by-item accounting).

Indeed, in this regard, the Special Master is not persuaded by Lieff that courts are constrained by the percentage-of-fund or lodestar methodology traditionally employed by the district courts reviewing in a fee award for the first time. Here, there is no dispute that the

[10] *See, e.g.*, *Natalie M. ex rel. David M. v. Dep't of Educ., Haw.*, Civ. No. 06–00539 JMS–BMK, 2007 WL 2110510, at *7 (D.Haw. July 19, 2007) (adopting special master's recommendation to reduce fees by 30% based on party's limited success in litigation).

original fee award was *inaccurate*. The Court has since vacated that award and directed the Special Master to address those inaccuracies through a series of recommendations. Given the unique circumstances giving rise to this fee review, there is a great need for equitable considerations that render a mathematical lodestar cross-check simply inadequate. For example, if Lieff were correct that the Court should order disgorgement only upon a yield of an excessive multiplier, the Court's hands would be tied to redress any misstatements – no matter how egregious – absent a multiplier that registers as "unreasonable" according to historical benchmark.[11] This result would render the Court's and the Special Master's review a mere formality.

This view would, moreover, fundamentally collide with the recognized need in the First Circuit for courts to be flexible when determining the scope of an appropriate fee. *See In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 308 (1st

[11] Put in this context, Lieff's contention that a disgorgement is only appropriate in instances where removal of the double-counted hours yields an unreasonable multiplier and that this is not the case with the almost 2.0 multiplier here – is simply another way of arguing that the Court must function as an accountant rather than an arbiter of justice. Given the complexity of fee petitions, courts are not so constrained, and may adopt a variety of approaches, including applying across-the-board discounts to reach an equitable result. *See, e.g., Ohio-Sealy Mattress Mfg. Co. v. Sealy Inc*., 776 F.2d 646, 655-657 (1985); *In re Anthem, Inc. Data Breach Litig.*, 2018 WL 1940418, at *11-12 (N.D.Cal. 2018) (Special Master was not bound by strict application of the 25% percentage of fund benchmark, recommending instead the use of a modified lodestar approach with a percentage haircut to appropriately compensate counsel); *see also Moreno v. City of Sacramento*, 534 F.3d 1106, 1115-116 (9th Cir. 2008).

In this same vein, the Special Master points out that Lieff is not *entitled* to receive a multiplier on its individual lodestar. First and foremost, the previous fee award has been vacated, and this the Court is not bound by the reasonableness determinations of Lieff's lodestar as compared to the $75 million total fee award, or the $15,116,965.50 award allocated to Lieff. The Court will look anew at what a reasonable fee award is for all of the Customer Class firms, and it is entirely within the Court's discretion to award, or not award, a multiplier on the hours – whether or not the Court is operating under a lodestar-based or percentage-of-fund calculation with a lodestar cross-check. The Court is simply not bound by these artificial constructions. Moreover, a multiplier is simply not warranted here. A multiplier is given where the Court has determined that, in consideration of all the circumstances of the settlement and the work that went into the underlying case, additional compensation is warranted. *See In re Relafen Antitrust Litigation*, 231 F.R.D. 52, 79 (D.Mass. 2005) (listing the factors to consider when determining a reasonable attorney fee); *Zeffiro v. First Pennsylvania Bank, N.A.*, 581 F.Supp.811, 813 (E.D.Pa. 1983) (holding application of a multiplier to increase a lodestar is not mandatory).

Cir. 1995)(district courts have discretion to use best method or combination of methods to fit individual circumstances); *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 265 (D.N.H. 2007)(noting the Court's extremely broad latitude to adjust the contours of the fee petition). Maintaining a more pliable approach enables the Court to balance the thoroughness of a lodestar review with the efficiency of a percentage of fund calculation and is preferred. *See In re Thirteen Appeals*, 56 F.3d at 307. However, no method is foolproof, and one-time adjustments may become necessary where, as here, there is a further need for deterrence.

ii. The Special Master's recommendation that Lieff forfeit a portion of its fee is directly tied to the nature – and value – of the double-counted errors, and serves as a deterrent against future mistakes.

The need for adopting flexible approach in assessing the fee petition is all the more necessary where, as here, the Special Master, and later, the Court, are tasked with not only reviewing the reasonableness of legitimate work performed but must do so in balance of the various errors and omissions already uncovered. The Special Master's recommendation that the firms each forfeit a portion of the overstated lodestar functions strikes an equitable result, that, while not a literal disgorgement of fees earned, serves as a substantial deterrent against putting themselves in positions fraught with such risk in the future.

While partial fee forfeiture is not imposed with great frequency in the class action context, often reserved to address an unquantifiable harm or breach of fidelity,[12] modest fee forfeiture is appropriate because the risks undertaken by Lieff in agreeing to loan its own employees to Thornton were, in fact, realized.

[12] S*ee Austrian & German Bank Holocaust Litig.,* 317 F.3d 91, 102 (2d Cir. 2003); *Allapattah Servs., Inc. v. Exxon Corp*., 454 F. Supp. 2d 1185, 1237–39 (S.D. Fla. 2006)(imposing a limited forfeiture of incentive award awarded to class representative who forfeited right to seek large award from the class).

Contrary to Lieff's contention that the Court should brush aside the double-counting mistakes because the inclusion of fictitious hours did not render the multiplier *per se* unreasonable, the mistakes made on Lieff's own petition were material. As a whole, the fee petition inflated the total number of hours by 9,322.9 and the total lodestar by $4,058,654.50. *See* Dkt. 357, Ex. 178. Specifically, Lieff overstated lodestar by $868,417 hours, and erroneously credited itself for a substantial portion of hours worked by four different attorneys. *See* Lieff Objs, pp. 98-99. While determination of a lodestar multiplier is one, important function of the lodestar calculation, *see New England Carpenters Health Benefits Fund v. First Databank,Inc.*, 2009 WL 2408560, at*1-2 (D. Mass. 2009), it is not the only one. Nowhere in class action law is it written that the Court may not make assumptions and review the entirety of the information presented to it. Here, the Court may well have considered the additional $868,417, which was counted more than one-and-a-half times as much by virtue of a 1.69 multiplier in approving the fee request.[13] It would have been well within the Court's bailiwick to consider this information.

In recommending forfeiture, the Special Master is cognizant of the fact that fee forfeiture is not a common remedy.[14] But the events necessitating the Special Master's appointment were

[13] The Special Master, viewing the fee petition as a whole, has recommended that Lieff disgorge the lodestar fee claimed for contract attorneys at a rate 1.8 times the calculation to account for the overall 1.8 multiplier yielded by a cross-check of the original total attorney hours against the requested $75 million award. Solely for the purposes of addressing Lieff's concerns that disgorgement of the double-counted hours is not warranted, and thus not correct, the Special Master considers the individual lodestar obtained by comparing Lieff's total hours with its 20.3 % portion of the $75 million fee award.

[14] In its objections, Lieff argues, in passing, that the Court should not retroactively remove the contract attorney lodestar (with a lodestar multiplier) from Lieff's lodestar calculation and reimburse the Customer Class firms for the costs expended on a dollar-for-dollar basis. *See* Lieff Objs., pp. 77-78. Lieff's retroactivity argument is misleading, implying that the Master has deprived Lieff of its due process rights. *Contrast Hammond v. United State*, 786 F.2d 8, 11 (1st Cir. 1986). This is far from the case. On March 8, 2017, the Court appointed the Special Master to investigate and assess the accuracy and reliability of the fee petition previously approved, but over which the Court had retained jurisdiction. *See* Dkt. # 173, ¶ 2. As exemplified by the Court's June 22, 2018 and August 10, 2018 orders, the Court has since vacated the fee award and will consider the issue of appropriate fees anew. *See* Dkt. # 331; Dkt. # 445, n. 1. Thus, the appropriate award of attorneys' fees, if any, is still a live issue. Most recently, the Court resubmitted the Report to the Special Master to, among other issues, address Lieff's Objections that directly challenged the Special Master's recommendation that contract attorneys should be treated as an expense. *See* Dkt. # 445, ¶ 2, citing Fed. R. Civ. P. 23(h)(4) and 53(f)(1). The question of how contract attorneys should be treated for

anything but common. The Special Master is simply not swayed by the argument that the relatively minor value of the firm's overstated lodestar, or the lack of access to documentation that would reveal such an overstatement (upon which the Special Master based his finding that Lieff's role was "*somewhat* mitigated," (Dkt. # 357, p. 363), translates into either a lack of culpability or a lesser disgorgement amount for the error. The fact remains that each mistake made, including those by Lieff, contributed to the larger double-counting mistake.

Finally, the recommended $4.1 million disgorgement is both proportionate to the significant monetary recovery realized by Lieff (and the other Customer Class firms) and substantial enough to deter future conduct that would mislead the Court. Forfeiture of $1,352,666.67 amounts to a disgorgement of 8.9 %[15] of Lieff's recovery -- hardly an excessive penalty. *See Ohio-Sealy*, 776 F.2d at 657 (15% reduction does not constitute an impermissible penalty). This amount, moreover, is tied directly to the nature and degree of the Customer Class's mathematical error. The Special Master can think of no more appropriate remedy to discourage Lieff and its counterparts from entering into similarly perilous arrangements in the future and to nullify any financial benefit conferred upon it by its own imprecision and poor judgment.[16]

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purposes of a fee award remains a dispute before the Court and any deviation from the original treatment given to the contract attorneys will not prejudice Lieff nor be "retroactive" in any legal sense.

[15] On pp. 98-100, Lieff argues it has already born more than its fair share of costs for the $8,670,000 mistake it made. Lieff Objs., pp. 98-100. The Special Master addresses Lieff's contribution to the double-counting error in detail *infra*. Moreover, the Special Master is not persuaded that the costs of the investigation should play a role in determining the appropriate redress for the double-counting error, which the Special Master addresses independently from the expenses incurred by the Customer Class for the ongoing investigation, a recommendation formed more than six months ago.

[16] Here, the Special Master notes that the double-counted hours consisted entirely of hours performed by staff or contract attorneys, which collectively comprised 88.3% of Lieff's total lodestar hours, and $6,606,479.50 of its fee requests. (This calculation is based on reductions for double-counting. Without adjustments, the hours performed by staff or contract attorneys accounted for 89.5% of Lieff's total lodestar hours, for a total of $7,474,896.50 in fee requests).

B. Lieff's participation in the ill-advised staff attorney cost-sharing agreement and its mistakes in calculating staff attorney hours render it equally responsible for the double-counting mistake.

Lieff makes much of the fact that the Special Master previously observed that Lieff's relative responsibility for the double-counting is "somewhat mitigated" and that its conduct was "inadvertent." Lieff Objs., pp. 76-77. These general observations do not speak to the *remedy* proposed by the Special Master, and in any event, are not binding findings of fact at this stage in the post-Report proceedings.

The issues concerning Lieff's role in the double-counting error are familiar ones. While the Special Master observed that each of the Customer Class firms played a different role in the double counting story, it is important to point out that the Special Master did not exonerate any of the Customer Class firms – as he did the ERISA firms. Far from it. He, instead, described how the firms' respective courses of conduct converged, together, to cause the submission of the overstated lodestar. And, make no mistake, Lieff attorneys played a substantial role. Dkt. # 357, pp. 219-224. First and foremost, Lieff knowingly entered into an ill-advised arrangement, as did Labaton and Thornton, to allow Thornton to put its own staff attorneys on the Thornton firm's lodestar. *See* Dkt. # 357, pp. 220-221. Although the agreement itself was not a "significant" cause of the double-counting, its unusual existence invited further mistakes and fostered nondisclosures that more causally explain the overstated lodestar. It bears repeating that, apart from a single instance at Labaton, *none* of the other Plaintiffs' counsel had participated in such an arrangement to not only share the costs of litigation, but to list the names of attorneys whom it did not employ on the firm's individual lodestar. Goldberg 7/17/17 Dep., pp. 45:22 – 47:15 (Dkt. # 357, Ex. 199); Goldsmith Dep., pp. 98:20 – 99:16 (Dkt. # 357, Ex. 58). In other words, Lieff was a willing participant, and at the origin, stood on equal footing with Thornton and Labaton.

Moreover, neither Lieff, Labaton nor Thornton reduced to writing their understanding about how this name-and-cost-sharing arrangement would be claimed in the fee petitions. That is, there was no explicit agreement to allow Thornton to include the names of staff attorneys employed elsewhere, just a shared understanding between some, but not all, members of the Customer Class firms. Dkt. # 573, p. 45. As the Special Master explained in his Report, the lack of an explicit agreement, between the firms compounded by the internal barriers in Labaton's staffing of the State Street case, helped build a cognitive a barrier to identifying and correcting any mistakes on the lodestar before it went to the Court. Again, the blame for not reducing the agreement to writing must be shared by each of the three firms.

Beyond participating in the agreement, Lieff, like the other Customer Class firms, did not explain nor describe the contours of the staff attorney name-and-cost-sharing arrangement in its individual fee petition. This failure even continued in David Goldsmith's November 10, 2016 Letter, which purportedly disclosed the error to the Court. *See* Dkt. # 116. After receiving a model declaration from Labaton settlement counsel Nicole Zeiss, Lieff had ample opportunity to revise the suggested template language and add additional details explaining that some of the attorneys whom it employed, and who in some instances appeared on its lodestar, also appeared on Thornton's individual fee petition pursuant to an agreement to share the costs. If the firms believed that there was nothing nefarious about loaning staff attorney names to Thornton – even where Thornton did not supervise or otherwise manage the staff attorneys it claimed to employ on its lodestar – adding a brief description (or even denoting which "SAs" were employed by another firm) would not have put the requested fee in jeopardy. Each of the Customer Class firms had an opportunity to share information that it deemed important for the Court to consider, including the pertinent details of the genesis of the hours on the firm petitions upon which the

Court calculated the lodestar multiplier and, ultimately, the total attorneys' fee. Lieff, like Thornton and Labaton, did not present information about sharing the names of the staff attorneys.

Therefore, turning back to Lieff's argument that it should not be required to pay one-third of the overstated lodestar because the Special Master observed that the staff attorney cost-sharing arrangement was not a direct cause of the double-counting, the Special Master highlights the many ways in which the actions taken by Lieff *after* entering into the arrangement did materially contribute to the double-counting of hours on the fee petition. For example, had Lieff memorialized its understanding in an internal memorandum that was shared with its accounting and administrative offices who assisted in generating the fee petition the case, the contract attorneys would likely have received adequate instruction on time-submission and record-keeping practices. Also, had the agreement been memorialized, the accounting office compiling the lodestar for the fee petition would presumably have accurately designated the hours of Chris Jordan and Jonathan Zaul between Thornton and Lieff. Furthermore, had Lieff directly addressed the name-and-cost sharing agreement in its fee declaration, putting the Court on notice of the fact that attorneys listed on its lodestar also appeared on Thornton's, the Court may have reviewed those petitions with greater scrutiny and caught itself the double-counted hours well in advance of the November 2, 2016 hearing – allowing the parties an opportunity to correct it before the Court approved the fee award.

But perhaps most importantly, Lieff not only knew that Thornton intended to put the staff and contract attorneys on its own lodestar petition, it implicitly authorized Thornton to do so by providing names and hours of the staff and contract attorneys to Thornton, and in fact, in at least one email acknowledged that Lieff would do so. *See* 6/16/17 Dugar Dep., pp. 144:9 - 115:22

(Dkt. # 357, Ex. 55); TLF-SST-033277 (email from D. Chiplock D. Goldsmith discussing the origin of the double counting error) (Dkt. # 357, Ex. 261).

But beyond the "what ifs," Lieff explicitly agrees that it made mistakes in calculating the lodestar figures submitted to the Court. Putting aside Labaton's role as Lead Counsel, which granted it unique access to all the firms' lodestars before the final fee petition submission, Lieff had an obligation to accurately report its own hours to Labaton and to the Court. As Lieff's Head of Litigation Support, Kirti Dugar, testified during discovery in the investigation, Lieff failed to supply accurate information in two material respects: (1) the time for two Lieff contract attorneys, Rachel Wintterle and Ann Ten Eyck, should not have been included as part of Lieff's lodestar at all; and (2) a portion of two staff attorneys, Chris Jordan's and Jonathan Zaul's hours, were mistakenly included on Lieff's lodestar for a period of time in which they had been allocated to Thornton. Lieff Obj., pp. 37-38. This much is not in dispute. While the Special Master has found that the mistakes were inadvertent, to be sure, Lieff independently *made* mistakes that contributed to the double-counted hours on the fee petition. These record-keeping errors are just another piece of Lieff's involvement and another factor in weighing the appropriate redress.

Neither Lieff, nor for that matter the other Customer Class firms, can hardly claim surprise that there would be a disgorgement of the double-counted hours. In fact, the firms contemplated that disgorgement would result from Goldsmith's November 10, 2016 Letter. *See* 11/10/16 Ltr. (Dkt. # 357, Exh. 179). The Customer Class firms, concerned that the Court would react negatively to Goldsmith's letter, all signed an agreement whereby the firms would refund their "*pro rata* share of any Court-ordered reduction of fees, expenses, and / or service awards" should the Court reduce the total fee award *Id.* Ultimately, all counsel, including Lieff, signed

onto this agreement. Goldsmith 7/17/17 Dep., p. 160: 2-7 (Dkt. # 357, Ex. 58). In signing this agreement, Lieff recognized that it was possible, if not probable, that the Court may require the Class Counsel firms to disgorge a portion of the fee in response to learning of the overstated lodestar. It is disingenuous for Lieff to now argue that such remedy is contrary to their expectations and to the Court's authority in reviewing the fee award.

In sum, Lieff's actions added to the morass of opaqueness and ambiguity out of which the overstated lodestar was born. Each firm made its own contributions to the error, without any one of which the error may well have either not occurred at all, or been caught by one of the firms or the Court. It is with due consideration of these factors – as well as the respective actions of Labaton and Thornton – that the Special Master recommended that each of the Customer Class firms share equally in paying back the full amount of the overstated lodestar to the class. It is important to point out that the Special Master did *not* equate the firms' respective responsibility for the double counting with the percentage of the overstated lodestar that he recommended each firm pay to the class. *See* Dkt. # 357, pp. 363-364. Because it was not possible to assign percentage responsibility with Talmudic precision, the Special Master, rather, struck a balance to administer "rough justice" to remedy the double-counting errors caused by mistakes, missteps, and omissions of various flavors. *See* Dkt. # 357, p. 376. This is precisely the rationale reflected in the Special Master's statement that "the intent here has been to identify true and unmistakable professional misconduct, to remedy wrongs and to put the law firms and the class roughly in a position that is proportionate to the conduct and the harm." It is not required that a firm engage in professional misconduct *per se* to render it subject to an equitable remedy. As described above, these equitable remedies are not formal discipline or sanctions imposed as a penalty. The Special Master's recommended disgorgement of $4,058,000 recognizes the value of the

overstated lodestar and deters future sloppiness. The fact that Lieff's accounting mistakes only comprise 21.4%, or $868,417, rather than the 33.3% recommended by the Special Master, ignores the equitable nature of his recommended remedy, and is beside the point. Lieff's contribution was a significant and proximate cause of the error.

Lieff further argues that it has already paid more than its fair share of the costs given its relatively small role in the double-counting error and the Special Master's finding that Labaton was solely responsible for the nondisclosure of Damon Chargois' actual role in the case. Lieff Objs., pp. 96-100. The Master has consistently taken the position that the three Customer Class firms should share equally in the costs of the investigation. *See* Dkt. # 357, pp. 372-373. The prolongment of the investigatory phase, after emails referencing Damon Chargois came to light, was as much Lieff's responsibility as it was Labaton's and Thornton's. Lieff was fully aware that Chargois received approximately $4.1 million in this case, and that Chargois did not appear on the fee petition seeking the $75 million award from which he was paid. Lieff , however, did not take any steps to bring this significant payment to the Special Master's attention prior to August 2017, of its own volition or in response to the Master's discovery requests. In fact, like Labaton – but unlike Thornton – Lieff did not produce numerous emails or other documents relating to the Chargois payment that it has in its possession in response to the Special Master's written discovery requests. This certainly contributed to the prolongment of the investigation. Once the Chargois payment became known to the Master, Lieff and its experts argued and litigated extensively that the Customer Class Counsel firms were under no obligation to inform the Court or class of the payment. Lieff's retrospective compartmentalization of its role in the entirety of the investigation is not supported by its very active role, including the proffering of expert

testimony, in opposing the Master's positions on issues well beyond its particular role in the doublecounting or its inclusion of contract attorneys in its lodestar.

V. The Special Master continues to recommend that contract or agency attorneys employed by third-party staffing companies be billed as an expense.

The issue of how contract attorneys should be treated has ramifications beyond this case, and the Special Master believes it is one of the most far-reaching and significant issues that the Special Master identifies in his Report. It is not simply a question of mathematical services and calculation of hours; it is an issue that goes directly to the integrity of the legal process and public confidence in how attorneys are compensated. As the Court has indicated in these proceedings, it has "a duty to protect and promote the integrity of the administration of justice." 10/15/18 Hrg. Tr., p. 13: 6-7 (Dkt. # 496). The December 17, 2016 *Boston Globe* article focused on the treatment and mark-up of staff and contract attorneys, which highlights the importance of this issue to the public and how the proverbial man on the street views the justice system.

Lieff, and to some extent Thornton, argue that treating contract attorneys as a litigation expense is a sharp departure from current class-action jurisprudence. Relying on an overly-simplistic observation of current trends, Lieff baldly argues that federal courts are, instead, unanimously *opposed* to the Master's position that contract attorneys be billed at cost rather than marked-up as a legal fee. Lieff Objs., pp. 79-84. While some federal courts have declined to distinguish between a full-time associate employed by a law firm and a non-permanent "contract attorney" for purposes of allowing a mark-up and assignment of a multiplier, only one court has squarely addressed the difference *among* the various types of non-associate or "contract" positions, such as the staff and contract attorneys utilized in the State Street case. *See In re Citigroup Inc. Bond Litigation*, 988 F.Supp.2d 371, 376-378 (S.D.N.Y. 2013). As the Special

Master has noted, the role of staff and contract attorney differ greatly in compensation, employment status, benefits, job security, and firm responsibility. However, even in *In re Citigroup Inc. Bond Litigation*, the court only noted briefly at the difference, focusing instead on the role and value of staff attorneys in particular.

Courts have routinely focused their discussion on the generic label of "contract attorneys," without specifying whether this term included or excluded other non-associate attorneys who may have more permanent employment arrangements. *See e.g. In re: Cathode Ray Tube (CRT) Antitrust Litig.,* 2016 WL 4126533, at *8-9 (N.D. Cal. 2016). While these rather superficial discussions have yielded a consistent trend of decisions approving those "contract attorneys" at marked-up rates less than those of a firm associate (*see* discussion, *infra*), none of these courts have meaningfully analyzed the differences between contract attorneys essentially rented from a staffing agency on the one hand, and non-associate attorneys actually hired by the law firm on the other, nor on the more important issue whether the former should be marked-up at all, as was the case here.

Customer class Counsel, and other similarly situated firms, should not be rewarded for skirting the responsibilities and obligations inherent in a full employment relationship by relying on temporary attorneys to staff its cases. The use of temporary workers is not implicitly wrong, and in fact, delegation to lower-cost attorneys can be a useful tool for cost savings and efficiency. Often times, this practice allows a firm to take on larger cases and save money for its clients. However, when firms rely heavily on contract attorneys – in lieu of regular employees – as a way to net a larger profit, the likelihood of a windfall and delegating effects on fostering up and coming attorney talent far outweighs any public policy interest. And, in holding out such a farce to the court, the class, and the public at large, firms engaged in this practice not only derail

the public's confidence in the judiciary but directly harm the attorneys at the center of the scheme. *See Schwann v. FedEx Ground Package System, Inc.*, 2017 WL 4169425, at *4 (D.Mass. 2017) (analyzing Massachusetts's independent contractor statute, *citing* to *Somers v. Converged Access, Inc.,* 454 Mass. 582 (2009), finding the Legislature was concerned with "the 'windfall' that employers enjoy from the misclassification of employees as independent contractors: the avoidance of holiday, vacation, and overtime pay; Social Security and Medicare contributions; unemployment insurance contributions; workers' compensation premiums; and income tax withholding obligations"). Permitting law firms to mark-up contract attorney rates for the purposes of increasing profits goes against the very tenets of an employer-employee relationship.

It should be the goal of law firms, such as Lieff, to fully employ the attorneys they trust to handle such high level work—as it had done in some instances to date—rather than profit off their status as temporary workers. The policy concerns described greatly inform the Special Master in addressing the proper treatment of contract attorneys in this case. Indeed, the Master's investigation has not been conducted in a vacuum but arose directly out of the concerns raised by the *Boston Globe*, and moving forward, the Special Master is conscious of the implications his Report and Recommendations has on how the public views the judicial system and how important it is to take measures to rebuild that confidence.

Thus the Special Master agrees to some extent with the prevailing view that paying clients should pay attorneys retained by law firms on a temporary basis or only for one-off cases at a rate less than that paid to firm associates. *See City of Pontiac Gen. Employees' Ret. Syst. V. Lockheed Martin Corp.*, 954 F.Supp.2d 276, 280 (S.D.N.Y. 2013) ("a sophisticated client, knowing these contract attorneys cost plaintiff's counsel considerably less than what the firm's

associate attorneys cost (in terms of both salaries and benefits) would have negotiated a substantial discount in the hourly rates charged the client for these services."); *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 395 (S.D.N.Y. 2013) ("[c]ourts seem to agree that a contract attorney's status as a contract attorney – rather than being a firm associate – affects his market rate"); *In re Citigroup Inc. Bond Litigation*, 988 F.Supp.2d at 377 ("[t]he Court does question, however, whether the proposed blended hourly rate for staff attorneys actually reflects what a reasonable client would pay); *In re Beacon Assocs. Litig*., 2013 WL 2450960, at *18 (S.D.N.Y. 2013) ("there is absolutely no excuse for paying those temporary, low-overhead employees $40 or $50 an hour and then marking up their pay ten times for billing purposes."). In fact, the basic rationale applied by the Courts in making this distinction – that the firm does not assume the same financial, administrative, and employment overhead – resonates with the Master in determining the precise rates that should be paid to contract attorneys in the State Street case.

Where the Special Master parts ways with these courts is the distinguishing of fully-employed attorneys from those working on one-off cases. None of the cases cited by Lieff discuss the various factors that should be considered in evaluating whether a non-associate attorney should be included on the lodestar but focus exclusively on addressing contract attorneys vis-à-vis their associate counterparts. Nor do they, or the vast majority of cases commenting on contract attorney rates, discuss the import of having hourly employees on the validity of overall fee that should be granted in a class action case. *See, e.g.,* LCHB Objs., pp. 80-81, *citing In re Tyco Int'l, Ltd. Multidistrict Litig.,* 535 F. Supp. 2d 249 (finding it appropriate to bill contract attorney's time at market rates because associate and contract attorneys alike are licensed attorneys); *In re Petrobras Securities* Litigation, 317 F.Supp.3d 858, 874-876 (S.D.N.Y.

2018); *In re Anthem, Inc. Data Breach Litigation,* 2018 WL 3960068, at *17-20 (N.D. Cal. 2018); *In re Optical Disk Drive Prod. Antitrust Litig.*, 2016 WL 7364803, at *8 (N.D. Cal. 2016). *See also* Rubenstein 1st Decl., n.41. Indeed, while some courts have dipped their toes in these waters, they have not waded in deeply.

Bearing in mind this legal landscape, the Special Master continues to argue, as he did in his Report, that the practice of treating contract attorneys the same as staff attorneys in a lodestar claim, while paying them dramatically lower fees, and while having no obligation to pay benefits or overhead, is unfair to the contract attorneys and to the class. This inequitable practice creates a windfall and is of benefit only to the firms and should cease. But this recommendation in no way alters the Special Master's conclusion that qualified staff attorneys should be compensated at prevailing market rates. While the Court has raised the issue of the appropriate rate for staff attorneys, the Special Master has described in detail the rationale for permitting a modest mark-up of staff attorney rates in his Report. *See* Dkt. # 357, pp. 176-189. The Special Master reaffirms and restates those reasons here, and continues to draw a sharp distinction between staff attorneys employed by the firms on a long-term basis and the rented contract attorneys. Therefore, the Special Master supports Lieff's and Thornton's previous position that their staff attorneys should be compensated at prevailing market rates.

VI. The Chiplock Declaration further illuminates the incongruity of treating contract attorneys as a legal fee on a lodestar submitted in support of a fee petition.

In its own Objections, Thornton points out that Daniel Chiplock, the lead litigator on the State Street case for Lieff, submitted a declaration that imprecisely described contract attorneys retained by Lieff in this case, and included on the Lieff and Thornton fee petitions, as employees:

> "The Lieff and Labaton affidavits, under the Special Master's hyper-technical reading, also appear to be false. The Lieff affidavit, for instance, lists as Lieff

> Cabraser "employees" attorneys who were actually "contract" or "agency" attorneys with whom Lieff Cabraser did not have an employer-employee relationship. *Compare* Chiplock Decl., 9/14/16 (SM Ex. 89) (referring to all attorneys in same manner as Bradley Declaration) with Lieff's Resp. to Interrog. No. 24, 7/10/17 (TLF Ex. 6) (noting some attorneys listed on lodestar were contract attorneys). Thornton Objs., pp. 47-48.

Thornton goes on to argue that, just as Lieff (and Labaton) should not be sanctioned for such imprecision, neither should Thornton and Garrett Bradley. As explained in the Special Master's Response to Thornton's Objections, the Court should reject Thornton's effort to skirt responsibility for making multiple false and misleading claims by mischaracterizing them as "hyper-technical" or by implying that "everybody does it."

To be sure, Lieff's description of the outside contract attorneys as members of the firm is inaccurate. The Chiplock Declaration describes the firm's lodestar calculation [Exhibit A] as follows:

> Exhibit A is a summary indicating the amount of time spent by each attorney and professional support staff-member ***of my firm*** who was involved in the prosecution of the Class Actions, and the lodestar calculation based on ***my firm's current billing rates***. For personnel who are no longer ***employed by my firm***, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of ***employment*** by my firm. The hourly rates for the attorneys and professional support staff ***in my firm*** included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other complex class actions. Chiplock Decl, ¶¶ 4-5 (Dkt. # 357, Exh. 89) (emphasis added).

Read together, and in context, the Chiplock Declaration leads the Court to believe that all of the individual attorneys listed in the firm's lodestar, submitted along with the firm's fee submission, are employees of the firm. This is not correct. Lieff did not employ the handful of contract attorneys retained by the firm to assist in the State Street case. While some of the contract attorneys may have worked from Lieff's physical office space or appeared on the firm's

malpractice policy, they were not *employees,* as suggested by the Declaration. Lieff Objs., pp. 86-88.

But the similarity to Garrett Bradley's misstatements in his own Declaration ends there. Unlike Bradley's many patently false statements concerning contract attorneys that ran afoul of this same language, Lieff's language was at least somewhat tethered to the reality of the relationship of these attorneys to Lieff. While imprecise, Lieff's description of its contract – as opposed to staff – attorneys as employees was far less misleading because Lieff maintained *some* relationship with those attorneys, who, in the case of two attorneys, worked at Lieff's offices and had a longstanding relationship with the firm, albeit not a formal employer-employee relationship.

Therefore, although perhaps sloppy in its use of loose language to describe the relationship, the statements in Chiplock's Declaration do not, in the Special Master's estimation, rise to the level of out-right, blatant misrepresentations of multiple facts. Accordingly, the Special Master does not recommend discipline for this, and believes that a simple admonishment from the court to be more careful in the future would suffice.

A final word generally about the larger issue of treating contract attorneys like a firm's employee attorneys for lodestar purposes is appropriate here. Thornton's argument does underscore the incongruity of treating contract attorneys like staff attorneys in a lodestar submitted in support of a fee petition. Specifically, Thornton's observation—or concession—that contract attorneys are not "employees" highlights why staff attorneys, who are actual employees who have been vetted in hiring, are receiving attorney-level compensation and benefits, and who have a stake in their firm's future, should be accordingly valued in the lodestar, while contract attorneys, who are rented from a third-party company, did not receive

benefits from the firm and have no investment in the firm's future, should be treated as the expense which their transient and transactional relationship to the firm warrants.

VII. Conclusion

Lieff's decision to allow Thornton to claim Lieff staff attorneys and contract attorneys on Thornton's lodestar and its failure to ensure that accurate information was provided to the Court, directly contributed to the double counting and over-stated lodestar in this case and Lieff's responsibility is not obviated by the lodestar's function as a cross-check on the percentage of fund fee award or by Labaton's failures. Lieff's treatment of contract attorneys as equal to its firm's staff attorneys for lodestar purposes is inequitable, unsupported, and against the interests of the class and the legal profession. Just as importantly, to permit non-employee, rented lawyers to be marked up by a magnitude of eight to ten times, then to be marked up again through a lodestar multiplier of almost two times, will undermine public confidence in the integrity of class action attorney compensation. And, if a court were to condone this, it would invariably undermine the public's confidence in judicial supervision and oversight of the entire attorney fee compensation process, not to mention potentially undermining the Court's role as a fiduciary for the class.

For all the reasons set forth in this response, the Special Master recommends that the Court order Lieff to pay one-third of the approximately $4.1 million overstated lodestar and additionally that Lieff disgorge and return to the class the contract attorneys' lodestar of $2,241,098.40, less a reasonable expense of $50 per hour for each hour of work performed.

Dated: November 20, 2018

Respectfully submitted,

SPECIAL MASTER HONORABLE GERALD E. ROSEN (RETIRED),

By his attorneys,

/s/ William F. Sinnott

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically on November 20, 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,
vs. No. 11-cv-10230-MLW

STATE STREET BANK AND TRUST COMPANY,
Defendant.
_____/

ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, and those similarly situated,
Plaintiffs,
No. 11-cv-12049-MLW
vs.

STATE STREET BANK AND TRUST COMPANY,
Defendant.
_____/

THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, on Behalf of itself, and JAMES PEHOUSHEK-STANGELAND and all others similarly situated,
Plaintiffs,
No. 12-cv-11698-MLW
vs.

STATE STREET BANK AND TRUST COMPANY,
Defendant.
_____/

SPECIAL MASTER'S PARTIALLY REVISED REPORT & RECOMMENDATIONS SUBMITTED IN RESPONSE TO THORNTON LAW FIRM'S OBJECTIONS[1]

[1] The Special Master herein references and incorporates the Master's Partially Revised Report and Recommendations Submitted in Response to Lieff Cabraser Heimann & Bernstein's Objections, filed simultaneously with the Court. Lieff and Thornton both argue that the Special Master erred in recommending (1) the disgorgement of the $4.1 million double-counted lodestar and (2) that contract attorneys should be treated as an expense and billed at cost. *See* Lieff Cabraser Heiman & Bernstein's Objections to the Special Master's Report and Recommendations ("***Lieff Objs.***"), pp. 67-95. Thus, the Special Master addresses each argument separately, but, for the sake of brevity, incorporates his responses to Lieff's Objections in responding to Thornton, as set forth below.

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I. Introduction

On May 14, 2018, the Special Master submitted his Report and Recommendations and exhibits thereto, under seal ("Report"). Among other topics, the Report addressed the accuracy and reliability of the fee petition submitted by Plaintiffs' counsel in *Arkansas Teachers' Retirement System v. State Street, et. al.,* No. 11-cv-10230 ("State Street"). On June 29, 2018, the Thornton Law Firm ("Thornton") filed detailed objections to the findings of fact, conclusions of law, and recommendations in the Report.[2]

On August 10, 2018, the Court resubmitted to the Master his Report and directed him to amend, or to make revisions to, the Report that may have been occasioned by the firms' objections and exceptions. *See* Dkt. # 445; 8/9/10 Hrg. Tr., pp. 45:21-46:5. In late August, while Thornton's, and all counsel's, objections remained pending, the Special Master – prompted a conversation initiated by Labaton – took steps to determine if a global resolution with all firms was viable. With the Court's approval, the Special Master invited all firms to attend an all-day meeting in Boston to further explore the possibility of a global resolution. The Master was not able to reach agreement with Lieff and Thornton consistent with his understanding of his responsibilities to the Court and, therefore, Lieff and Thornton's objections remain outstanding.

On October 16, 2018, the Court directed the Special Master and Thornton to confer as to whether they could agree to narrow the scope of the issues remaining in dispute. Dkt. # 494. Counsel for the Special Master and for Thornton were able to narrow the disputed issues considerably in light of the still-pending Proposed Partial Resolution between the Special

[2] All three Customer Class Counsel filed written objections shortly after the Court unsealed the Report and Recommendations. *See* Dkt. # 359 (Labaton's Objections) and Dkt. # 367 (Lieff's Objections). The ERISA Firms subsequently filed written exceptions to Labaton's Objections contesting, mainly, the payment of additional monies to the ERISA Firms. *See* Dkt. # 387; Dkt. # 398; Dkt. # 392.

Master, Labaton, and the ERISA Firms. *See* Dkt. # 503. However, the following legal issues remain in dispute as to Thornton:

1. With respect to the double counting of staff attorney hours, there are three separate issues: (1) the extent to which Thornton was at fault for the $4.1 million double counting error; (2) whether Thornton should disgorge or forfeit some portion of the $4.1 million of overstated lodestar;[3] and, if so, how,[4]much?

2. Whether time expended by the contract attorneys reported on Thornton's lodestar should be calculated as an expense [entitled to a market mark-up and lodestar multiplier], rather than as legal fees on the attorney lodestar?

3. With respect to the proposed Rule 11 sanctions, there are two main issues: (1) whether the actions and/or inactions on Thornton's and/or Garrett Bradley's behalf merit Rule 11 sanctions; and (2) whether the sanctions proposed by the Special Master were reasonable and appropriate? A third, related, issue is whether Garrett Bradley's conduct warrants referral to the Board of Bar Overseers for discipline?

4. Whether an outside expert or former judge should be appointed to ensure Thornton's compliance with applicable ethical rules moving forward?; and

5. Whether Thornton should disgorge the value of the lodestar listed on its fee petition for work performed by Michael Bradley?

Just as Thornton pointed out additional concerns pertaining to Lieff's fee petition, Lieff highlights in its objections that the Special Master did not specifically recommend that Thornton – which listed four contract attorneys retained by Lieff on its individual lodestar[5]-- disgorge the total lodestar it received for that work. The Special Master herein addresses Lieff's concerns in two ways: first, the Special Master reaffirms and restates his recommendation that all firms

[3] Thornton's objection to the Special Master's recommendation that the firm disgorge a portion of its fee that led to an overstated lodestar is part of the firm's broader objection to the Master's recommendation that it disgorge any portion of its fee – including disgorgement of Michael Bradley's lodestar included on the firm's collective lodestar – because the concerns raised by the Special Master do not materially affect the resulting multiplier received by the firm. Lieff raises an analogous objection to the Master's recommendation as to issues (1) and (2) listed above.

[4] Bracketed language connotes additional clarifications to the list of issues submitted to the Court on October 25, 2018. Dkt. # 503.

[5] The following contract attorneys, retained by Lieff, appeared on the Thornton lodestar: Ann Ten Eyck, Rachel Wintterle, Andrew McClelland, and Virginia Weiss.

claiming (non-permanent and non-employee) contract attorneys on their lodestars should treat them as an expense and that contract attorneys not be listed on the attorney lodestar at marked-up rates and eligible for a multiplier; and, second, that in light of this distinction, Thornton should disgorge approximately $1,344,057, representing the total lodestar it claimed for contract attorneys, to the class.

II. Relevant background relating to Thornton's receipt of attorneys' fees from the State Street fee award.

On March 8, 2017, the Court appointed the Hon. Gerald E. Rosen (ret.) to investigate the accuracy and reliability of the fee petition ("Appointment Order") submitted in the State Street case seeking $75 million[6] in attorneys' fees. Dkt. # 173. The Special Master's appointment was prompted, in large part, by a December 2016 article in the *Boston Globe* following the submission of a letter by Customer Class Counsel (Labaton Sucharow, Lieff Cabraser Heimann & Bernstein, and the Thornton Law Firm) on November 10, 2016, disclosing an error on the fee petition caused by double-counting certain hours performed by staff attorneys employed by Lieff and Labaton ("November 10, 2016 Letter"). *See id*, pp. 1-3. The *Globe* article focused on, among other issues, the large mark-up on "contract" attorneys[7] as well as the $500/hour hourly rate claimed by Thornton on its fee petition for work performed by Michael Bradley, an outside attorney and brother of Thornton's managing partner Garrett Bradley, who was not employed by, or and who did not work direct with or for, Thornton or any of Plaintiffs' Counsel in this case.

Over the ensuing fourteen months, the Special Master engaged in informal interviews with nearly all of the attorneys involved in the mediation and settlement of the case, and in

[6] The original fee petition sought $74,541,250.

[7] The Boston Globe article did not differentiate between staff attorneys actually employed by the firm and contract or agency attorneys employed by outside staffing agencies.

particular, those individuals who prepared the fee petition, and memorialized this testimony through the formal discovery process. *See* Dkt. # 357, p.138. While the discovery of a $4.1 million payment to Texas attorney Damon Chargois – prompted by documents produced by Thornton in response to the Special Master's Requests for Production – expanded the landscape of the Master's investigation, the substantive issues raised by the Special Master in his Report concerning Thornton largely had nothing to do with the payment to Chargois.[8]

III. Pursuant to Fed. R. Civ. P. 53(f)(1) and the Court's order, the Special Master has discretion to revise his Report and Recommendations as well as address new matters arising in the post-Report stage.

The Special Master, of course, is not bound by the factual findings in the Report, given the Court's direction in its August 10, 2018 order that the Master address the firms' objections and the Court's subsequent instruction to the parties. *See* Dkt. # 445.[9] In resubmitting the Report to the Special Master, the Court cites to Fed. R. Civ. P. 53(f)(1), which permits the Court to "resubmit [a Report] to the master with instructions." Fed. R. Civ. P. 53(f)(1). Federal courts that have availed themselves of Rule 53(f)(1) routinely do so alongside additional instructions and areas of focus. *See e.g., D.C. v. Department of Educ.*, 2008 WL 2902079, *7, 10 (D.HI Jul 25, 2008)(ordering the special master to recalculate attorneys' fee award based on the court's

[8] Having said this, it bears noting that Thornton's managing partner, Garrett Bradley, had extensive dealings directly with Chargois and concerning Chargois' compensation. Because of this, and because Bradley was also serving as "Of Counsel" to Labaton for purposes of business development, as well as other reasons, the Special Master did not find credible Bradley's testimony that he was not aware of the full nature of Labaton's arrangement with Chargois. However, because it was not possible to fully parse Garrett Bradley's role in the Chargois arrangement vis-à-vis the two hats he was wearing, and because Labaton was ultimately responsible for the Chargois arrangement, the Special Master, in the end, decided to charge only Labaton, and not Bradley or Thornton with responsibility for the Chargois arrangement and the concomitant disgorgement remedy. However, it would not be saying too much to assign at least some responsibility for Chargois to Bradley, because of his dual role with Thornton and Labaton.

[9] At the August 9, 2018 hearing, the Court ordered, pursuant to Rule 53 and Rule 24(h)(4), that the Special Master's Report and Recommendations be resubmitted to the Special Master to respond in writing to the then-pending objections of the Customer Class Counsel, to participate in oral argument at a hearing, and have the opportunity to question witnesses if an evidentiary hearing is held. The Court also indicated the Master could perform any related tasks with the Court's permission. 8/9/18 Hrg. Tr., pp. 45:21 - 46:14.

criteria); *Buchillon v. Same Deutz-Fahr*, 2017 WL 496078,*4 (N.D. Miss. Feb. 2, 2017)(resubmitting report to the special master for clarification regarding issues and objections filed by the parties).

While the Court has instructed the Master specifically to address the Law Firms' remaining objections (*see* Dkt. # 455, p. 2), including the proper rate for calculating the lodestar for the contract attorneys and whether a lodestar should be applied to any disgorgement of the original lodestar, the Court did not limit the Special Master *or* the firms to the four corners of the Law Firms' written objections. Rather, the post-Report stage has proven to be an iterative process and one that has prompted the Court, from time to time, to identify several new issues, such as the reasonableness of staff attorney rates – a topic not in dispute by the parties – and the reasonable percentage of a fee award drawn from a $300 million common fund, as well as other issues emerging since the Court vacated the attorneys' fee award . *See* 11/7/18 Hrg. Tr., p. 99: 16-21; p. 102: 2-8; p.103: 7-13 (Dkt. # 519). In short, the Court has not limited the Special Master to reaffirming verbatim his factual findings should the Special Master wish to revisit those factual findings along with his conclusions of law and recommendations.

IV. Because Thornton spearheaded the name-and-cost sharing agreement, greatly contributing to the circumstances out of which the double-counting arose, the Special Master continues to recommend that Thornton pay one-third of the double-counted hours to the class.[10]

Similar to Lieff, Thornton objects to the Special Master's recommendation that it pay back a one-third share of the overstated lodestar ($1,352,666.67) on two grounds: (1) that the Special Master "confuses" the function of a lodestar cross-check in recommending dollar-for-

[10] The Special Master addresses the rationale for disgorging the full value of the double-counted lodestar, as well as the treatment of contract attorneys, in detail in his Responses to Lieff's Objections, and herein incorporates that substantive discussion in discussing those same issues raised by Thornton.

dollar disgorgement of the overstated lodestar amount; and (2) that Thornton was not responsible.

We begin by restating a point on which all parties agree: the double counting errors made in the fee declarations submitted to the Court were largely inadvertent. Dkt. # 357, pp. 7, 352, 363. Thornton would have the Court believe that such inadvertence should be the end of the inquiry on the double-counting disgorgement. However, in clinging to this notion, Thornton fails to appreciate the larger point that mistakes *were* made – and Thornton contributed substantially to these mistakes -- and some redress must be recommended.[11] Given the breadth and complexity of the attorneys' fees generated in large class action cases, the Court must rely on the attorneys to accurately summarize and submit their time for compensation at the end of a case. *See* Special Master's Responses to Lieff, p. 8. Where the information submitted to the Court does not accurately convey the work performed, or the circumstances upon which the fee request is made, steps must be taken to make up for the shortcomings of those errors, which here include a myriad of consequences stemming from the name-and-cost sharing agreements for one firm to list the names of employees of another firm on its lodestar. And, because the Court has vacated the fee award, it – and the Special Master the Court appointed to scrutinize these errors – is well within its discretion to exercise its equitable authority to properly adjust the fee award in a manner that addresses the lodestar error and deters such avoidable errors in the future.

[11] Here, it should be noted that Thornton benefited disproportionately to the other firms from the artifice of putting the attorneys employed (or retained) by Labaton and Lieff on its own lodestar. This is because Thornton did not have sufficient employees itself to generate a substantial lodestar on its own and it was only by putting the attorneys of the other firms on its lodestar that it was able to generate the lodestar hours to justify a substantial fee award, and it was, of course, this artifice that led to the double counting error – and to where we are today.

A. The Special Master's recommendation that Thornton disgorge one-third of the overstated lodestar adequately addresses the firm's failure to provide accurate information that may have resulted in a lesser attorneys' fee.

Thornton's contention that the overstatement of 9,322.9 hours, yielding $4,058,000, had no effect on the Court's approval of attorneys' fees in this case is not tethered to reality. Its insistence that the lodestar functions "*only* as a means of verifying the reasonableness of the percentage of the recovery being awarded to the attorneys" overlooks both the gatekeeping role of the Court and the great degree of equitable discretion delegated to the Special Master to impose across-the-board adjustments to a fee award even after a District Court has approved the request. *See* Special Master's Responses to Lieff, pp. 11-12 (summarizing the authority of court-appointed special masters to impose one-time reductions to account for problems with a fee submission). Indeed, where, as here, the Court has vacated the original fee award, the recommendations of the Special Master, tasked with balancing the equities and legitimate contributions to the outcome against the hours and rates set forth in the fee petition, goes directly to the core of the Court's gatekeeping function and its fiduciary obligations to the class. It may well be the case that the Court considers these recommendations in determining how it should reapportion the fee award to account for the various mistakes and nondisclosures in the original submission, but in no event is the Special Master confined to conducting a bookkeeping exercise.[12]

Therefore, the Special Master has considered the circumstances that led to the $4.1 million counting error, including the Court's statement at the November 2, 2016 fairness hearing

[12] The Special Master continues to recommend that the original $74,541,250.00 fee award serve as the starting point for the Court in issuing a revised fee award. Putting aside the mistakes that have overshadowed the admirable settlement achieved for the class, an award of $74,541,250.00 is reasonable and largely justified by the tenacious advocacy and time expended by all of the law firms representing the class in this case. The Special Master's proposed recommendations and remedies offer the Court some guidance as to how to address, among other things, the double-counting error that prompted the *Boston Globe* article and led to the Special Master's appointment in this case.

that it intended to apply a 20-30% of fund fee award against a lodestar cross-check as well as the magnitude of the error itself, and has recommended partial fee forfeiture to be shared equally by all three Customer Class firms. *See* Dkt. # 357, pp. 363-364. While disgorgement is not a popular remedy among federal courts, in this instance, the punishment fits the crime. On balance, the Special Master recommended that the Customer Class firms disgorge 6.05 %[13], of the total fee award received by the Customer Class firms, and that Thornton, which, as set forth below, significantly contributed to the double-counting mistake, disgorge 7.4 % of the firm's portion of the fee award.[14]

A disgorgement of $1,352,666.67 by Thornton is appropriate because, in practice, payment of the one-third amount reduces the monies claimed by the firm as of a result of its agreement to include the names of Lieff and Labaton staff and contract attorneys on Thornton's lodestar. In fact, staff or contract attorney hours comprised approximately 71.5 % of Thornton's individual lodestar. It is fitting that the value claimed by Thornton under the same ill-advised arrangement that gave rise to the billing error be proportionately reduced to account for Thornton's material role in causing the overstatement.

Finally, as the First Circuit has recognized, "individualization is the name of the game." *In re Fid./Micron Sec. Litig*., 167 F.3d 735, 737 (1st Cir. 1999); *see also In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 308 (1st Cir. 1995)(favoring a flexible approach to determining fee awards rather than confinement to a single award method). Because the events giving rise to the double-counting error – including

[13] For calculation purposes, the total Customer Class firm fee includes the $4,099,768.75 allocated to Chargois.

[14] The Customer Class firms agreed to allocate the non-ERISA share of the fee award as follows: 47% paid to Labaton; 29% paid to Thornton; and 24% paid to Lieff. *See* Thornton Law Firm's Objections to the Special Master's Report and Recommendation's ("***Thornton Objs.***"), Ex. 7 & 8.

participation in an otherwise unheard-of name-and-cost sharing agreement to list employees of another firm on a lodestar petition – were anything but ordinary, the Special Master has attempted to craft a remedy that, while it may deviate from the traditional siloes of fee calculation, is specifically tailored to the mistakes each firm made and will also serve to deter future errors.

B. Thornton's central role in pursuing a name-and-cost sharing agreement renders it at least equally responsible for the double-counting errors in the fee petition.

Like Lieff, Thornton tries to shift the blame away from its own actions onto Labaton, who, as lead counsel, failed to detect the double-counting error before submitting the fee petition – including Thornton's individual petition – to the Court. Thornton Objs, pp. 17-22 (seizing on the phrase "ultimate responsibility" to signify the greatest responsibility for the overstated lodestar). While Labton's failure to ensure the accuracy of the petitions before submission was certainly *one* cause of the double-counting – and Labaton had the final opportunity to detect duplication – it is not the only cause nor even the leading proximate cause.

First and foremost, Thornton was a willing and originating participant in the agreement with the other Customer Class firms to not only share the costs of litigation, but to use the names of Labaton and Lieff attorneys on Thornton's individual lodestar. While the Special Master did not find that this name-and-cost sharing agreement itself was unethical or impermissible on its face, such an agreement is nevertheless fraught with risk of misleading the Court and others as to the true nature of the work performed by each firm, and absent detailed specific descriptions of the arrangement in a declaration supporting the fee petition, could not help but mislead the Court as to which firm's attorneys actually performed work – and how much work – on the case. It follows that, given the unusual nature of the sharing relationship, neither the Court nor members of the other firms privy to the agreement would be alert to the fact that staff attorney names

would be, or could be, shared across fee petitions unless Thornton and the other Customer Class firms put all those playing a role in the fee petition process – most importantly, the Court with the final authority to approve a fee award – on specific notice of this arrangement. Thornton made no effort to do so. To the contrary, Garrett Bradley's Declaration submitted in support of Thornton's fee request misrepresented and obfuscated this fact. For this alone, Thornton must bear responsibility.

More to the point, notice of the arrangement was lacking in two material respects. First, neither Thornton nor the other firms reduced to writing their apparent understanding (at least as to some members at each of the Customer Class firms) that Thornton would claim the hours it paid for on its fee petition. The Customer Class firms exchanged thousands of emails, including a flurry in 2015 as they heatedly negotiated the allocation among the firms, but not a single email explicitly communicated Thornton's intention to include Labaton's and Lieff's contract and staff attorneys on its lodestar.[15]

Second, and more penetratingly, Thornton did not disclose the name-and-cost sharing agreement in its own submission to the Court. While Thornton makes much of the fact that it did not draft its own declaration but worked off a draft received from Labaton, it was free to modify the narrative language – as several other firms did, and as it did elsewhere in the "boilerplate" model[16] – to fully disclose the nature of its arrangement with the staff and contract attorneys (it paid for their costs) and with the other Customer Class firms. Specifically, Thornton agreed to pay for the costs in exchange for listing attorneys at each firm, largely full-time employees, on its

[15] On June 29, 2015, Michael Lesser of Thornton circulated an interim lodestar calculation for Thornton tallying hours thus-far worked by Thornton attorneys as well as "external" reviewers. *See* Dkt. # 357, Ex. 68. This reference is far from adequate documentation, much less an *agreement*.

[16] *Compare* Dkt. # 357, Ex. 201 (Nicole Zeiss's model fee petition) *with* TLF-SST-032536 – 032545 (Evan Hoffman's edits to the model fee petition sent to Nicole Zeiss) (attached as Ex. A); *see also* TLF-SST-032006-032015 (Nicole Zeiss's additional edits) (attached as Ex. B).

lodestar. Of course, the failure to call the Court's attention in Garrett Bradley's Declaration [Dkt. # 104-16, R&R Ex. 66] to the staff attorney arrangement is compounded by the patent falsities in that same document. While the misstatements contained in Bradley's Declaration are discussed in detail below, it is important to point out that Thornton not only failed to be transparent about the nature of its relationship with numerous of the individuals listed on its lodestar, but it also submitted a sworn declaration that affirmatively represented to the Court that all of the individuals listed on its fee petition were employees of the firm, a falsity that kept the specter of this highly-unusual and risky practice below the radar.

V. The Special Master recommends that Thornton disgorge an additional $1,344,057 reflecting the contract attorney lodestar it claimed on its fee petition.

Prompted by Lieff's Objections, the Special Master clarifies his recommendation as to the contract attorneys. As discussed in detail in the *See* Special Master's Responses to Lieff, pp. 22-24, public policy as well as the economic realities contingent with employment militate strongly in favor of deeming contract attorneys as a litigation expense, not eligible for a traditional mark-up for legal services. Among other things, the contract attorneys assigned to the State Street matter did not receive the same employment benefits, did not impose tax liability upon the firms, nor did they pose the same administrative, human resources and managerial undertaking as full-time employees. The Special Master simply cannot condone allowing firms to receive full market rates, plus a multiplier, where it is essentially renting these attorneys for a small fraction of the cost *with little risk* and no commitment by the firms.

Building on these general principles, the Special Master notes that, while Lieff retained all seven of the contract attorneys in that it arranged for the individuals to be staffed to the State Street case and provided their credentials and access to case materials, Thornton claimed four of these rented attorneys on its lodestar. *See* G. Bradley Declaration, Dkt. # 104-16, Exhibit A

(R&R Ex. 66). The Special Master recommended in his Report that "the *law firms* not be permitted to be compensated for these attorneys at market rates and no multiplier should be granted on their hours and rates (if a multiplier is granted). Rather, the costs of the contract attorneys should be reimbursed *to law firms* as an expense, and the firms compensated for that expense dollar-for-dollar." However, the Special Master did not recommend the specific disgorgement for each firm. Thus, consistent with the Special Master's rationale in recommending that Lieff disgorge $2,241,098.40 related to the contract attorneys (*See* Special Master's Responses to Lieff, pp. 18-20; 29), the Special Master recommends that Thornton pay the class $1,344,057 to reflect the full value of the lodestar submitted for the four contract attorneys not employed by Thornton or any of the Customer Class firms.

VI. The Special Master continues to recommend that Rule 11 sanctions be imposed on Garrett Bradley, as well as a referral to the Board of Bar Overseers, based on Bradley's utter failure to make an inquiry reasonable under the circumstances in submitting a sworn declaration to the Court in support of a $75 million fee award.

In arguing that Rule 11 sanctions should not be imposed and that Garrett Bradley should not be referred to the Board of Bar Overseers, Thornton objects to the Special Master's legal conclusion and its underlying factual findings that Garrett Bradley intentionally filed a false fee declaration in this Court. Thornton Objs., pp. 26-78. Thornton makes a myriad of accusations against the Master for finding a violation of Rule 11: that the Master has failed to establish that Garrett Bradley had a motivation to deceive; that the Master has misrepresented the evidence regarding Garrett Bradley's review of the declaration prior to submission and regarding whether Bradley admitted he intentionally lied to the Court; and that the Master has made inconsistent findings as to the intentionality of Bradley's actions. Thornton Objs., pp. 35-44. Instead, Thornton characterizes Bradley's declaration as a mere mistake which he corrected at an appropriate time. Thornton also argues that the nature of the erroneous statements made by

Bradley do not rise to the level of a Rule 11 violation or satisfy the purpose in imposing Rule 11 sanctions because they lack the severity or materiality necessary to violate that rule. Thornton Objs., pp. 44-59.

Thornton's argument largely ignores, or distorts, the voluminous evidence presented by the Master during his investigation which, in compelling fashion, shows that Bradley acted intentionally in submitting a false fee declaration. As a preliminary matter, the Report details each of the six false statements contained in Bradley's sworn declaration:

> 1. His palpably false assertion that Exhibit A [individual attorney lodestar] was a summary of time spent by attorneys and professional support staff members "of my firm." None of the SAs were employed by Thornton. Dkt. # 357, p. 227.
>
> 2. His fictitious claim that the billing rates for the SAs are "based on my firm's current billing rates." Thornton did not maintain "current billing rates" for SAs or other attorneys listed on its lodestar calculation in Exhibit A. Dkt. # 357, p. 227.
>
> 3. The misleading statement that for personnel "who are no longer employed," the lodestar is based on their rates for the "final year of employment." Again, none of the SAs were employed by Thornton. R Dkt. # 357, p. 227.
>
> 4. The pronouncement that the schedule was prepared from "contemporaneous daily time records regularly prepared and maintained by my firm." The record evidence is that Thornton did not prepare or maintain adequate or daily time records of the hours worked by the SAs listed on its lodestar. Dkt. # 357, pp. 227-228.
>
> 5. His admittedly-erroneous statement that the proffered hourly rates "are the same as my firm's regular rates charged for their services." Thornton did not maintain "regular rates" for the SAs listed on its lodestar report. Dkt. # 357, p. 228.
>
> 6. The fallacy that these rates "have been accepted in other complex class actions." With the exception of 4 staff attorneys, the $425 rate charged[17] for the remaining staff

[17] The Special Master observed that Thornton's standard rate of $425/hour for staff and contract attorneys was, in almost all cases, greater than the rates charged by Lieff and Labaton for the same attorneys. Dkt. # 357, pp. 180-181. While the Special Master did not make a specific finding of fact, or legal conclusion, that $425/hour was not reasonable, he concluded, consistent with the methodology employed in the November 10, 2016 Letter, that, because Thornton used slightly higher rates, "an adjustment of the amounts billed in Thornton's lodestar for staff attorneys will be required." Dkt. # 357, p. 181. As the differing rates for the double-counted staff attorneys were addressed as part of calculating the $4,058,000 overstated lodestar, no further adjustment is necessary. The Special Master acknowledges that Thornton used the $425 rate with the agreement of at least Lieff, as the same rate was used – and accepted – for the staff attorneys working on the *BNY Mellon* case. Dkt. # 357, p. 180, n. 146.

attorneys listed on the lodestar, including Michael Bradley, had not been accepted on a fee petition submitted by Thornton in other complex class actions. Dkt. # 357, p. 228.

Notwithstanding the indisputable falsity of the above six claims in Bradley's sworn Declaration, Thornton attempts completely to eschew responsibility by conflating them as "immaterial misstatements in a boilerplate affidavit." While proclaiming that facts are stubborn things, Thornton seems content to maintain that record evidence is entirely optional.

A. The evidence shows that Garrett Bradley intentionally entered into and furthered Thornton's participation in the ill-advised cost-and-name sharing agreement as an attempt to receive a greater fee.

In arguing that there was no motivation to deceive co-counsel or the Court, Thornton asks the Court, in Orwellian fashion, to disregard the record, in which Bradley's motivation for making the false statements is clear and damaging. The record evidence shows that Bradley was *fully aware* of the firm's participation in the name-and-cost sharing agreement, and felt that agreement was the best way to "jack up" Thornton's individual firm lodestar vis-à-vis the other Customer Class firms.[18] Dkt. # 357, pp. 221, 233. While the act of expending additional hours to increase the potential for a fee award is entirely permissible, the intention to do so by listing attorneys employed by another firm is less than transparent. Thornton argues that Garrett Bradley's "jack up the lodestar" reference cannot be considered evidence of deceptive intent because, in its view, the only victims of such inflated and potentially fabricated amounts could be its co-counsel, none of which have claimed to have been deceived. Thornton completely misses the point. As noted in the Master's report, Bradley's misrepresentations "infected the entire pleading" as Bradley's Declaration vouched for the firm's lodestar, including the names

[18] In fact, it was the only way to inflate its lodestar, as Thornton was a relatively small firm and did not have the sheer number of lawyers to support a large lodestar. If Thornton felt it was entitled to an out-sized share of the fee award by virtue of a contribution to the result of the case, it should have negotiated that with the other firms, or at least made its case for a higher fee to the Court, rather than attempting to misrepresent its contribution by a "jacked up" lodestar.

and identities of those attorneys listed on Exhibit A, which led to the approval of an inflated fee award. At the least, the Court was substantially misled by this artifice.

Thornton's assertion that the lodestar served as a mere cross-check, and that, therefore, Bradley had no incentive to deceive the Court, similarly misses the mark. Bradley participated in the ill-advised staff attorney name-and-cost sharing arrangement and then intentionally submitted a sworn declaration to the Court that failed to capture the important details supporting its multi-million dollar fee request. The fact that the Court does not award a dollar-for-dollar fee based on a sworn fee declaration does not make that declaration insignificant or the statements contained therein less important. In order for the Court to fulfill its gatekeeping and fiduciary responsibilities, a lodestar cross-check must be more than an empty exercise. It must be predicated on truthful and accurate information. Bradley, an experienced attorney, is presumed to have understood that in reviewing his declaration, this Court would draw meaning and assurance that the large fee award in this case was justified. And yet, he failed to make a reasonable inquiry required by counsel in the circumstances to ensure the complete accuracy of his statements. *See* Fed. R. Civ. P. 11(b).

B. Contrary to Thornton's unfounded claims that the Special Master misrepresented the record concerning intentionality, the evidence establishes that Garrett Bradley and Thornton had ample opportunity to review and correct statements they knew to be false but nevertheless executed the Declaration.

Thornton, in arguing that the Special Master has misrepresented the evidence regarding Garrett Bradley's involvement with the revisions of the fee declaration prior to submission to Labaton and Bradley's admission to intentionally making misstatements to the Court, rather significantly mischaracterizes the record itself. Thornton is, in fact, the party who, in its objections, conceals the complete and damaging testimony of Evan Hoffman on the matter of Bradley and fellow Thornton attorneys' review of the six false statements concerning the shared

staff and agency attorneys. In its objections, Thornton would have the Court believe that attorney Hoffman testified only to a review of the portion of Thornton's declaration that did not contain the false statements. Aside from the near-absurd position presented here, i.e. that experienced counsel limited their review of a sworn document to one particular section, the transcript of Attorney Hoffman's testimony contradicts this. In focusing only on the two words following the excerpted quote from the Report, Thornton conceals from the Court the continuum of testimony by Hoffman establishing that Thornton's review included the false statements at issue.

While a reading of the entirety of Hoffman's testimony regarding the declaration, pages 93 – 99, provides the most accurate record on this issue, the following exchange is compelling:

> JUDGE ROSEN: Drilling down just a little more finely on this, it was a phrase, I don't remember the actual language, but is it customary and regular rates charged – "the hourly rates for attorneys and professional support staff in my firm included in exhibit A are the same as my firm's regular rates charged for their services which have been accepted in other complex class actions," was that your language or was that language that was supplied to you by Nicole Zeiss?
>
> HOFFMAN: Language supplied to us by Nicole.
>
> JUDGE ROSEN: And you never changed that, edited it or talked to her about changing it?
>
> HOFFMAN: Correct.
>
> JUDGE ROSEN: Did that strike you as being incongruous – –
>
> (Discussion off the record)
>
> HOFFMAN [erroneously attributed to Judge Rosen]: I thought she was giving me the Thornton declaration, but our recollection is that that language was the same in all of the fee petitions.
>
> MR. SINNOTT: Do you remember seeing that language?
>
> HOFFMAN: Yes.
>
> SINNOTT: Did it trouble you at all?

> HOFFMAN: No, firstly because it was given to us by Labaton who I think has probably done hundreds, if not thousands of these fee declarations. My understanding was that Nicole Zeiss's sort of whole role at Labaton was to be the person and partner in charge of preparing the fee petition, so it didn't strike me as anything really.
>
> 6/5/17 Hoffman Dep., pp. 96:5 – 97:20 (Dkt. # 357, Ex. 63).

As the excerpt establishes, Hoffman and the other Thornton attorneys he previously acknowledged as having reviewed the declaration – including Garrett Bradley – saw the "language" and declined to edit it. The record, again, supports the Master's findings and directly refutes Thornton's claim that this finding is "the most egregious example of the Report's overreaching." Thornton Objs., p. 48.

Thornton further argues that the Special Master has misrepresented the evidence in order to find that Garrett Bradley admitted that he lied to the Court. First, as Thornton's own citations to the record state, the Report states in two places that "[a]t numerous times during the March 7 hearing, Bradley acknowledged that he knew his declaration contained inaccurate information, but he signed it anyway." The Report does not state that Bradley admitted that he "lied" to the court.

Second, the transcript of the March 7, 2017 hearing, which speaks for itself, supports the Special Master's finding. Contrary to Thornton's revisionist position in the Objections, the cited transcript references establish that Attorney Bradley admitted to this Court that he signed an affidavit that claimed that Thornton had paid its attorneys the same billing rates its clients paid—when in fact, as Bradley admitted, the firm had no paying clients. Dkt. # 357, Ex. 96. He admitted that the staff attorneys he claimed as attorneys whose rates were approved were actually housed at other firms. *Id*. Thornton's assertion that Bradley was not admitting that he knew he was signing an affidavit that contained inaccurate information strains all credulity, as does its assertion that the Master has grossly mischaracterized the evidence. *Id*.

C. The Special Master's findings are consistent that Garrett Bradley knew the declaration contained inaccurate statements but signed it anyway.

Thornton's claim that the Special Master's finding of intentional misrepresentation is belied by the Master's supposed inability to decide whether or not Garrett Bradley actually read the declaration is yet another misleading characterization of the Master's Report. Contrary to Thornton's objection, it is not the Special Master's finding that Garrett Bradley read the declaration, but rather that he reviewed it, knew that it contained false information, but signed it anyway. Bradley himself claims that he did read the declaration, albeit not closely: "I saw the final. Evan brought it in. I gave it, obviously, not a close read and then I signed it. I'm sure that I was on e-mail traffic for the draft form, as well." 6/19/17 G. Bradley Dep., pp. 84: 22-85:1 (Dkt. # 357, Ex. 43).

Bradley's March 7, 2017 hearing testimony, as highlighted in the previous section, as well as his deposition testimony, establish that he knew the declaration contained inaccurate statements but signed it anyway. Whether Bradley read the Declaration, "saw" it, or whether it was read or explained to him by Evan Hoffman or another colleague, or whether he was content to read only the emailed drafts, is not important. What matters is that Bradley reviewed the declaration, understood its important purpose as the basis upon which the Court would approve a large fee request, and signed it under oath. The Special Master's alternative finding is simply a recognition of that evidentiary imprecision, not a reflection of an inability to decide.

D. The evidence refutes Thornton's claims that the Bradley Declaration was a mere mistake that was timely corrected.

Finally, Thornton argues against intentionality by claiming that, notwithstanding the multiple and egregious falsehoods in Bradley's declaration that remained unaddressed for approximately four months, his declaration was a simple mistake that Bradley corrected at "the

appropriate time." Thornton Objs, pp. 42-44. As the Special Master concluded, the statements in Bradley's Declaration were false and not the product of negligence, but of an intentional and willful decision to further a risky cost-sharing arrangement with the other Customer Class firms and submit a false affidavit bearing the names shared. In an email exchange between Daniel Chiplock and Garett Bradley on August 30, 2015, Garrett Bradley's credibility with respect to the cost-sharing agreement is brought to the forefront of discussion. At the time, Chiplock confronted Garrett Bradley about the prospect that "Thornton Law Firm was showing 14 million. That number does not comport with the hours Mike Lesser told me for Thornton as of June 29 (around 12,750), which make more sense given what we know about the work that was done. I am hopeful Mike T. simply misspoke or was guessing when he said $14 million and that we are not going to suddenly see an additional 12,000 hours mysteriously appear on Thornton Law Firm's behalf" Dkt. # 357, Ex. 87. This demonstrates that even among Class Counsel, Thornton, and Garrett Bradley, were neither forthright nor clear with the reporting of their lodestar.

The end result is that Bradley provided misleading information to the Court as to his firm's true affiliation with the staff and contract attorneys whose work formed the bedrock of this case and the bases for the rates claimed for them. The statements were not "technical violations" or a failure to focus on boilerplate language, as opined by Thornton's expert witness. Dkt. # 357, pp. 234-236. Bradley intentionally submitted his sworn declaration and deliberately allowed the Court to rely on information that he knew to be false. Garrett Bradley did not acknowledge the falsity of his Declaration—even after having conducted a thorough further review of it, prompted by a Boston Globe inquiry—until the Court asked him to stand up on March 7, 2017 and, under oath, answer questions about it.

Having found that Bradley failed to discharge his duties under Fed. R. Civ. P. 11(b), by deliberately and willfully submitting a false declaration to the Court, the Court is well within its discretion to take appropriate measures, including referring Attorney Bradley to the Board of Bar Overseers. 1993 Advisory Committee Notes to Fed. R. Civ. P. 11(b). A referral, of course, is meant to prompt greater scrutiny of Attorney Bradley's actions and is not a recommendation that any bar discipline be imposed.

The referral to the Board of Bar Overseers is warranted as Garrett Bradley's deliberate and willful submission falls firmly within the confines of Rule 3.3(a) of the Massachusetts Rules of Professional Conduct. In making such a submission, Bradley knowingly "ma[de] a false statement of fact" to the Court. *See* Mass. R. Prof. C. 3.3(a)(1). However, even if intentionality were not found, Garrett Bradley's conduct still amounted to a violation of Fed. R. Civ. P. 11(b), for failure to conduct "inquiry reasonable under the circumstances." The Advisory Committee Notes indicate that what constitutes a reasonable inquiry depends on a variety of factors, including "how much time for investigation was available to the signer" and "whether he had to rely on a client for information as to the facts underlying the pleading, motion, or other paper." See Fed. R. Civ. P. 11, Advisory Committee Notes, 1983 Amendment. Even if the facts are viewed in the light most favorable to Garrett Bradley, there is no argument to be made that he conducted a reasonable inquiry even if his actions are found to have not been intentional. His utter failure to verify the statement he was signing under oath, on facts he either had first-hand knowledge of, or could discover the answer to with a phone call or email, is unacceptable, and as such, sanctions are warranted.

E. A monetary sanction of $400,000 to $1 million imposed jointly on Garrett Bradley and the Thornton Law Firm is compatible with the purpose of Fed. R. Civ. P. 11, is proportional to the egregious degree of Thornton's and Bradley's violation and is necessary for deterrence.

It is well-settled that sanctions levied under Rule 11 must sufficiently "deter repetition of the conduct or comparable conduct by others similarly situated." Fed. R. Civ. P. Rule 11(c)(4). This rationale applies with equal vigor in the First Circuit. *See, e.g., Lamboy-Ortiz v. Ortiz-Velez*, 630 F.3d 228, 247 (1st Cir. 2010). From this fundamental principle, Thornton seems to suggest that deterrence, then, is achieved only through the imposition of those monetary penalties previously found to be reasonable in the First Circuit. *See* Thornton Objs., pp. 59-66. But what Thornton fails to recognize is that what is sufficient to deter sanctionable behavior in one case, may not be sufficient in another case.

In fact, courts within the First Circuit have not had the occasion to impose monetary sanctions with any frequency. It comes as no surprise then that, as Thornton points out, the range of monetary sanctions handed down in this circuit is generally less than $100,000. And, while these penalties may have adequately addressed the conduct giving rise to the violation in those respective cases, a penalty of $5,000 to $100,000 does not stand to have a material effect on Thornton's recovery, much less a deterrent effect on future violations of the Rule.

Proportionality is an essential factor to consider when determining an appropriate sanction under Rule 11. *See Navarro-Ayala v. Nunez*, 968 F.2d 1421, 1427 (1st Cir. 1992) (reducing the amount of a Rule 11 sanction where the sanction was "disproportionate" since the attorney was a civil servant who "had no personal stake in the litigation and did not stand to gain from the Rule 11 violation"); *Bermudez v. 1 World Productions, Inc*., 209 F.R.D. 287, 293 (D.P.R. 2002) (upholding sanctions under Rule 11 and § 1927, where "the sanction here imposed is, the Court deems, proportionate to nature of the case, and the unreasonable conduct displayed

by the attorney for Plaintiffs."). Despite Thornton's attempts to downplay the severity and impact of Garrett Bradley's misrepresentations before the Court, the sworn declaration served as the sole basis for the Court to approve Thornton's $18 million dollars fee request, from a total fee award of $75 million. None of the cases presented by Thornton to support their argument, that the recommended range was inappropriate, come close to the size and complexity of the case at hand.

It should not be ignored that Garrett Bradley's submission of his sworn declaration, and the misrepresentations contained therein, was one of the causes of the double counting not being caught. Had Garrett Bradley accurately described it, Nicole Zeiss or the Court may well have caught the error.

Bearing in mind the magnitude of the fee award in this case, and the high stakes of a national class action settlement, the Special Master reaffirms his recommendation that Garrett Bradley and the Thornton firm be jointly and severally liable for a sanction in the range of $400,000 to $1 million. A sanction in this range is further supported by weighing the factors articulated in the Advisory Committee's notes to Rule 11: Bradley's conduct was willful; the misrepresentations pervaded the entire narrative; despite ample opportunity to correct the record, Bradley did not do so; Bradley's misstatements directly contributed to the double-counting error which has born incredible collateral litigation, not to mention time, money, and judicial resources; and, finally, given the substantial fee award received by the firm, Bradley's position as managing partner, and the firm's relatively lucrative track record, a substantial penalty is appropriate to deter future conduct. *See* Fed. R. Civ. P. 11, Advisory Committee Notes, 1993 Amendment**;** Dkt. # 357, pp. 232-233.[19] Accordingly, the Special Master has closely tied the

[19] Thornton continues to state that the misrepresentations made by Garrett Bradley before the Court are not unique in class action cases, and that, in fact, they "appear to be quite common in fee declarations." *See* Thornton Objs., p. 54.

recommended sanction range to a readily recognizable consequence of the misrepresentations, finding 10% to 25% of the cost of the double counting error to be proportionate to the relative contribution Garrett Bradley's false statements had on the error itself. The Master recognizes that such range calculation is not an exact science. However, the Master believes that a sanction approximating this range is necessary to deter Thornton, and other similarly situated firms, from continuing this practice.[20]

VII. Because Michael Bradley's rate of $500/hour was unreasonable, Thornton should disgorge the differential between the claimed lodestar value and an adjusted lodestar value at $250/hour, and not receive a multiplier.

A. A $250/hour rate properly recognizes the value and role served by Michael Bradley in the State Street case.

In its most recent iteration of the outstanding issues (Dkt. # 504), Thornton glosses over its previous objection to the Special Master's conclusion that $250/hour, rather than the proffered rate of $500/hour, was a more appropriate rate for Michael Bradley. Thornton argues that, despite finding that Michael Bradley performed work commensurate with that of a traditional junior-level associate, the Special Master's suggested rate ($250) is less than that of most associates, staff attorneys, and some paralegals at Lieff and Labaton. Thornton Objs., pp. 83-89.

This highlights that for a sanction in this instance to be an effective deterrent, it must be sizeable and tied to the harm caused. A de minimis sanction, not proportional to the effect the conduct had on the litigation and the amount of fees requested, will have little to no impact on deterring other law firms from continuing the purportedly "common" practice of making misrepresentations before a court to support their substantial fee requests.

[20] In his Report, the Special Master pointed out that Thornton has not historically, and does not currently, have a General Counsel equipped to advise its attorneys and staff on complicated ethical issues that arise. Given Thornton's track record in this case, the Special Master concludes that appointment of an outside monitor is necessary to ensure that, moving forward, Thornton fully discharges its ethical and legal obligations. In opposing the appointment of an outside monitor, Thornton argues that such a recommendation is "baseless" because an outside expert is helpless in preventing inadvertent mistakes, such as those made in this instance. *See* TLF Objs, pp. 108-110. As the evidence abundantly shows, Thornton, acting largely through its managing partner Garrett Bradley, intentionally misled the Court and failed to discharge its obligation of accuracy and truthfulness to the Court, actions that severely undermine the integrity of Thornton's legal representation as well as the integrity of the legal system in general. Given the firms' past failures to meet its ethical obligations, the Special Master continues to recommend that Thornton retain an outside expert to assist it in bringing its practices into full compliance with the applicable legal and ethical rules.

But while the value added by Michael Bradley, with a legal background and years of legal practice under his belt, was comparable to an associate, his *relationship* with Thornton was comparable to that of a contract attorney. He had no affiliation with the firm, no stake in the case, and no stake in the firm's success. While Michael Bradley is a licensed attorney he, unlike the associates, staff attorneys, and paralegals to whom Thornton compares him, was not subject to any direct supervision. In fact, outside of an on-boarding call with Evan Hoffman to become familiar with the online database, Michael Bradley was not subject to any supervision – no quality control, no general oversight, and no intermediate goals. It is not simply that he worked remotely, as others did, it is that Michael Bradley was essentially on his own, without the benefit of insight passed down concerning the litigation team's developing legal theory or direct Q&A with other reviewers or members of the litigation team From this freelance arrangement came no discernable work product – no fact memoranda, no witness or deposition preparation, and no fact investigation to educate the litigation team. This unusual background raises the question of whether Michael Bradley added any value to the State Street case.

Finally, a $250/hour rate falls in step with the rates typically charged by Michael Bradley for his regular criminal and civil representations as he received flat fees and rates as low as $53 per hour. *See* Dkt. 357, pp. 194-195. The fact that Michael Bradley was paid for two, unrelated representations at a rate close to or equal to $500 does not make this rate per se reasonable. *See* Dkt. # 357, pp. 193-197.

B. Disgorgement of half the lodestar generated from Michael Bradley's listed $500/hour rate is an equitable remedy imposed in response to the Special Master's finding that $500/hour rate was not reasonable.

As described above, the Special Master, and the Court, are not constrained by the limited purpose of a lodestar cross-check, a position that Thornton clings to as it argues that, absent an unreasonable multiplier, no further action is needed to address Michael Bradley's unreasonable

rate. While Thornton is correct that it did not receive a dollar-for-dollar payment of $203,000 for Michael Bradley's efforts, it still included an attorney with no relevant experience who did no detailed substantive work and was subject to no oversight at $500/hour on its lodestar fee petition. Some recourse is required. Here, the Master has reasonably recommended a recourse that requires Thornton to reimburse the class the overstated *value*, not the actual dollar amount received, flowing from the firm's decision to assign Michael Bradley a rate of $500/hour.

It is well within the Special Master's authority under the Appointment Order to recommend a remedy to address a finding that the information – Michael Bradley's "regular" rate – is not accurate or reliable. It bears repeating that, at this point in time, the Court has vacated the fee award. Thus, the Master's recommendation that Thornton disgorge half of the lodestar, plus the resulting multiplier recognized by the Court, achieves both a deterrent effect and the conferral of a monetary benefit to the class to whom Thornton failed to be transparent in seeking fees from the common fund pot. Moreover, given the status of the fee award, Thornton's calculation as to the net effect of recalculating Michael Bradley's lodestar and multiplier at the reduced $250 rate is premature.

VIII. Conclusion

While the double-counting errors in this case were inadvertent, they were not unavoidable, and Thornton's prominent and originating role in seeking the benefits of a highly-unusual and ill-advised name-and-cost-sharing agreement to list employees of another firm on its lodestar petition was fraught with risk of misleading the Court and others as to the true nature of the work performed by Thornton. This risk was, not surprisingly, realized and Thornton should disgorge one-third of the over-stated lodestar resulting from the double-counting to the class as

well as additional lodestar amounts arising out of its false claims of agency attorneys as its employees.

Thornton compounded the risk and its own legal exposure when Managing Partner Garrett Bradley submitted a sworn declaration that contained multiple falsehoods, including that all of the individuals listed on Thornton's fee request were employees of the firm, a fabrication that kept the specter of this highly-unusual and risky employee-sharing practice below the radar and which misled the class and Court as to the true nature of the work performed by Thornton in this case. Contrary to Thornton's claims of factual misrepresentations by the Master, the record evidence establishes that Bradley knew his declaration contained false and misleading statements and that he understood its important purpose as the basis upon which the Court would approve a large fee request, but signed it anyway as a way of inflating the lodestar.

Bradley's willful actions in signing a false affidavit violated several legal provisions, including Fed. R. Civ. P. 11 and Mass. R. Prof. C. 3.3, and, because of the blatant nature of the violations, the scale of the funds at issue, and Bradley's failure to inform the Court until called upon to do so under oath several months later, warrant a severe fine of at least $400,000 but no more than $1 million, and the appointment of an outside monitor to ensure that Thornton discharges its ethical and legal obligations in the future.

The record further supports the Master's finding that Michael Bradley's listed $500/hour rate was not reasonable and his recommendation that it be reduced by half and disgorged accordingly on equitable grounds.

Dated: November 20, 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)
BARRETT & SINGAL, P.C.
One Beacon Street, Suite 1320
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Email: emcevoy@barrettsingal.com

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically on November 20, 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

Ex. A

From: Evan Hoffman
Sent: Tuesday, September 13, 2016 10:32 AM
To: Zeiss, Nicole; Michael Lesser
Subject: RE: SST - model small fee declaration (1633650_1).doc
Attachments: SST - model small fee declaration (1633650_1).doc

Nicole, attached is our revised fee declaration, including the corrected lit fund contribution of $98,000. We also made some small additions to our scope of work section. Thank you

-Evan

From: Zeiss, Nicole [mailto:NZeiss@labaton.com]
Sent: Monday, September 12, 2016 9:54 AM
To: Evan Hoffman <EHoffman@tenlaw.com>; Michael Lesser <MLesser@tenlaw.com>
Subject: Re: SST - model small fee declaration (1633650_1).doc

You 98000
Lief 98000
Labaton 123000

Sent from my BlackBerry 10 smartphone.

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Nicole, I am reviewing our billing records. What is the total lit fund contribution supposed to be for each of the firms? That will help me in investigating this. Thanks

-Evan

From: Zeiss, Nicole [mailto:NZeiss@labaton.com]
Sent: Friday, September 09, 2016 8:22 PM
To: Michael Lesser <MLesser@tenlaw.com>
Cc: Evan Hoffman <EHoffman@tenlaw.com>
Subject: RE: SST - model small fee declaration (1633650_1).doc

I don't need to know today for sure, thanks

From: Michael Lesser [mailto:MLesser@tenlaw.com]
Sent: Friday, September 09, 2016 8:21 PM
To: Zeiss, Nicole
Cc: Evan Hoffman
Subject: Re: SST - model small fee declaration (1633650_1).doc

We will get it figured out by Monday.

On Sep 9, 2016, at 8:20 PM, Zeiss, Nicole <NZeiss@labaton.com> wrote:

> Your lit fund contribution is different from what we have. We have $98,000. Did you pay an invoice that you are treating as a contribution? If so, the invoice, instead, should just be one of your expenses.
>
> **From:** Michael Lesser [mailto:MLesser@tenlaw.com]
> **Sent:** Thursday, September 08, 2016 4:59 PM
> **To:** Zeiss, Nicole
> **Cc:** Evan Hoffman
> **Subject:** FW: SST - model small fee declaration (1633650_1).doc
>
> NZ: Garrett will talk to you about this tomorrow. Can you keep it Labaton-only for now?
>
> Thanks,
>
> M
>
> **From:** Evan Hoffman
> **Sent:** Thursday, September 08, 2016 4:13 PM
> **To:** Michael Lesser <MLesser@tenlaw.com>
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiffs, 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, Plaintiffs, 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, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 12-cv-11698 MLW

DECLARATION OF GARRETT J. BRADLEY, ESQ. ON BEHALF OF THORNTON LAW FIRM, LLP IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF

ATTORNEYS' FEES AND PAYMENT OF EXPENSES

Garrett J. Bradley, Esq., declares as follows, pursuant to 28 U.S.C. § 1746:

1. I am the Managing Partner of Thornton Law Firm, LLP. ("TLF"). I submit this declaration in support of Lead Counsel's motion for an award of attorneys' fees and payment of litigation expenses on behalf of all Plaintiffs' counsel who contributed to the prosecution of the claims in the above-captioned class actions (the "Class Actions") from inception through August 30, 2016 (the "Time Period")

Comment [A1]: We realize that people investigated the claims before the cases were filed in 2011 and 2012. A reasonable inception date should be set, which would likely not be before Oct 2009 when the April 2008 qui tam complaint was unsealed.

2. My firm is Liaison Counsel for the Plaintiff Arkansas Teachers Retirement System ("ARTRS")and the Proposed Class. TLF substantially contributed to the prosecution of this Action and performed work on behalf of and for the benefit of the Class. TLF has been actively involved in the prosecution of this Action since its inception. Prior to this case being filed in this Court, TLF and others investigated and evaluated ARTRS's and the putative Class's claims and damages, participated in the drafting of the initial and amended complaints, participated in the briefing of the opposition to the motion to dismiss, and contributed to and attended all of the mediation sessions with the mediator, Jonathan Marks, and the Defendants. TLF participated extensively in offensive document discovery relating to issues of liability and damages. TLF also worked closely with the non-testifying consulting expert, FX Transparency, retained in the Action. TLF, along with Lead Counsel and George Hopkins, Executive Director of ARTRS, met in Chicago with representatives of Ennis Knupp, a consultant engaged by ARTRS to oversee its investment managers, to discuss FX issues and potential claims against State Street. Apart from the ARTRS action, TLF served as lead counsel representing multiple relators in false claims act cases involving standing instruction FX. TLF brought the first cases

made public relating to the standing instruction FX schemes in 2008 and has been involved in foreign exchange litigation against custodial banks continually since that time.

3. The schedule attached hereto as Exhibit A is a summary indicating the amount of time spent by each attorney and professional support staff-member of my firm who was involved in the prosecution of the Class Actions, and the lodestar calculation based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. Time expended in preparing this application for fees and payment of expenses has not been included in this request.

Comment [A2]: In addition to not billing for fee/expense related time, you should only report lodestar that was directed at your clients in the Class Actions and the claims here, as opposed to other investigative work.

4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other complex class actions.

5. The total number of hours expended on this litigation by my firm during the Time Period is 15,302.5 hours. The total lodestar for my firm for those hours is $7,460,139.

6. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expenses items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit B, my firm has incurred a total of $ 372,404.58 in expenses in connection with the prosecution of the Class Actions. The expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

Comment [A3]: Expenses should be vetted so that they all relate to the time period, the clients in the Class Actions, and the claims in the Class Actions. All first class airfare should be reduced to economy; working meal reimbursement (including meals with clients) should be reasonable; alcoholic drinks should not be claimed.

8. With respect to the standing of my firm, attached hereto as Exhibit C is a brief biography of my firm as well as biographies of the firm's partners and of counsels.

I declare under penalty of perjury that the foregoing is true and correct. Executed on _____, 2016.

_____
Garrett J. Bradley, Esq.

EXHIBIT A

STATE STREET INDIRECT FX TRADING CLASS ACTION
No. 11-cv-10230, No. 11-cv-12049, No. 12-cv-11698 MLW (D. Mass.)

LODESTAR REPORT

FIRM: THORNTON LAW FIRM, LLP
REPORTING PERIOD: INCEPTION THROUGH AUGUST 30, 2016

PROFESSIONAL	STATUS*	HOURLY RATE	TOTAL HOURS TO DATE	TOTAL LODESTAR TO DATE
Michael P. Thornton	P	$850	585.9	$498,015
Garrett J. Bradley	P	$800	734.9	$587,920
Michael A. Lesser	P	$700	1,433.8	$1,003,660
Evan R. Hoffman	P	$535	1,110.2	$593,957
Jotham Kinder	A	$450	328.3	$147,735
Virginia Weiss	SA	$425	454.00	$192,950
Ann Ten Eyck	SA	$425	514.60	$218,450
Jonathan Zaul	SA	$425	327.00	$138,975
Michael Bradley	SA	$500	406.40	$203,200
Chris Jordan	SA	$425	288.00	$122,400
Andrew McClelland	SA	$425	358.50	$152,362
Rachel Wintterle	SA	$425	552.80	$234,940
David Alper	SA	$425	959.30	$407,702
Stephen Dolben	SA	$425	420.90	$178,882
Debra Fouchong	SA	$425	914.80	$388,790

Dorothy Hong	SA	$425	521.10	$221,467
Aron Rosenbaum	SA	$425	540.90	$229,882
Comfort Orji	SA	$425	644.20	$273,785
Albert Powell	SA	$425	678.00	$288,160
Jason Saad	SA	$425	480.70	$204,297
Roger Yamada	SA	$425	147.10	$62,517
Ebone Bishop	SA	$425	464.70	$197,497
Nicole Cameron	SA	$425	132.00	$56,100
Mashariki Daniels	SA	$425	562.10	$238,892
Jacqueline Grant	SA	$425	415.80	$176,715
Anuj Vaidya	SA	$425	442.70	$188,147
Betsy Schulman	SA	$425	274.00	$116,450
Ian Herrick	SA	$425	18.20	$7,735
David Packman	SA	$425	20.10	$8,542
Andrea Caruth	PL	$210	571.50	$120,015
TOTAL			**15,302.5**	**$7,460,139**

Partner (P)
Of Counsel (OC)
Associate (A)
Staff Attorney (SA)
Paralegal (PL)
Investigator (I)
Research Analyst (RA)

EXHIBIT B

STATE STREET INDIRECT FX TRADING CLASS ACTION
No. 11-cv-10230, No. 11-cv-12049, No. 12-cv-11698 MLW (D. Mass.)

EXPENSE REPORT

Comment [A4]: Please delete any items that don't apply

FIRM: THORNTON LAW FIRM, LLP
REPORTING PERIOD: INCEPTION THROUGH AUGUST 30, 2016

EXPENSE	TOTAL AMOUNT
Experts/Consultants	$154,434.47
Work-Related Transportation/Meals/Lodging	$119,970.11
Litigation Fund Contribution	$98,000.00
Miscellaneous	
TOTAL	**$372,404.58**

Ex. B

From: Zeiss, Nicole <NZeiss@labaton.com>
Sent: Tuesday, September 13, 2016 8:07 PM
To: Evan Hoffman; Michael Lesser
Subject: SSBT - your small fee dec - for tomorrow
Attachments: SST - Thornton Fee Dec (1640796_2).DOC

My minor line edits

From: Evan Hoffman [mailto:EHoffman@tenlaw.com]
Sent: Tuesday, September 13, 2016 10:32 AM
To: Zeiss, Nicole; Michael Lesser
Subject: RE: SST - model small fee declaration (1633650_1).doc

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> **To:** Michael Lesser <MLesser@tenlaw.com>
> **Subject:** SST - model small fee declaration (1633650_1).doc

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiffs, 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, Plaintiffs, 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, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 12-cv-11698 MLW

DECLARATION OF GARRETT J. BRADLEY, ESQ. ON BEHALF OF THORNTON LAW FIRM, LLP IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF

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ATTORNEYS' FEES AND PAYMENT OF EXPENSES

Garrett J. Bradley, Esq., declares as follows, pursuant to 28 U.S.C. § 1746:

1. I am the Managing Partner of Thornton Law Firm, LLP. ("TLF"). I submit this declaration in support of Lead Counsel's motion for an award of attorneys' fees and payment of litigation expenses on behalf of all Plaintiffs' counsel who contributed to the prosecution of the claims in the above-captioned class actions (the "Class Actions") from inception through August 30, 2016 (the "Time Period")

2. My firm is Liaison Counsel for ~~the~~ Plaintiff Arkansas Teachers Retirement System ("ARTRS") and the p~~P~~roposed Class. TLF substantially contributed to the prosecution of this Action and performed work on behalf of and for the benefit of the Class. TLF has been actively involved in the prosecution of this Action since its inception. Prior to this case being filed in this Court, TLF and others investigated and evaluated ARTRS's and the putative Class's claims and damages. For instance, TLF, along with Lead Counsel and George Hopkins, Executive Director of ARTRS, met in Chicago with representatives of Ennis Knupp, a consultant engaged by ARTRS to oversee its investment managers, to discuss FX issues and potential claims against State Street. TLF, participated in the drafting of the initial and amended complaints, participated in the briefing of the opposition to the motion to dismiss, and contributed to and attended all of the mediation sessions with the mediator, Jonathan Marks, and the Defendants. TLF participated extensively in offensive document discovery relating to issues of liability and damages. TLF also worked closely with the non-testifying consulting expert, FX Transparency, retained in the Action. ~~TLF, along with Lead Counsel and George Hopkins, Executive Director of ARTRS, met in Chicago with representatives of Ennis Knupp, a consultant engaged by ARTRS to oversee its investment managers, to discuss FX issues and potential~~

~~claims against State Street.~~ Apart from the ARTRS action, TLF served as lead counsel representing multiple relators in false claims act cases involving standing instruction FX. TLF brought the first cases made public relating to the standing instruction FX schemes in 2008 and has been involved in foreign exchange litigation against custodial banks continually since that time.

3. The schedule attached hereto as Exhibit A is a summary indicating the amount of time spent by each attorney and professional support staff-member of my firm who was involved in the prosecution of the Class Actions, and the lodestar calculation based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. Time expended in preparing this application for fees and payment of expenses has not been included in this request.

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4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other complex class actions.

5. The total number of hours expended on this litigation by my firm during the Time Period is 15,302.5 hours. The total lodestar for my firm for those hours is $7,460,139.

6. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expenses items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit B, my firm has incurred a total of $-372,404.58 in expenses in connection with the prosecution of the Class Actions. The expenses are reflected on the books

and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm, attached hereto as Exhibit C is a brief biography of my firm as well as biographies of the firm's partners and of counsels.

I declare under penalty of perjury that the foregoing is true and correct. Executed on _____, 2016.

_____
Garrett J. Bradley, Esq.

EXHIBIT A

STATE STREET INDIRECT FX TRADING CLASS ACTION
No. 11-cv-10230, No. 11-cv-12049, No. 12-cv-11698 MLW (D. Mass.)

LODESTAR REPORT

FIRM: THORNTON LAW FIRM, LLP
REPORTING PERIOD: INCEPTION THROUGH AUGUST 30, 2016

PROFESSIONAL	STATUS*	HOURLY RATE	TOTAL HOURS TO DATE	TOTAL LODESTAR TO DATE
Michael P. Thornton	P	$850	585.9	$498,015
Garrett J. Bradley	P	$800	734.9	$587,920
Michael A. Lesser	P	$700	1,433.8	$1,003,660
Evan R. Hoffman	P	$535	1,110.2	$593,957
Jotham Kinder	A	$450	328.3	$147,735
Virginia Weiss	SA	$425	454.00	$192,950
Ann Ten Eyck	SA	$425	514.60	$218,450
Jonathan Zaul	SA	$425	327.00	$138,975
Michael Bradley	SA	$500	406.40	$203,200
Chris Jordan	SA	$425	288.00	$122,400
Andrew McClelland	SA	$425	358.50	$152,362
Rachel Wintterle	SA	$425	552.80	$234,940
David Alper	SA	$425	959.30	$407,702
Stephen Dolben	SA	$425	420.90	$178,882
Debra Fouchong	SA	$425	914.80	$388,790

Dorothy Hong	SA	$425	521.10	$221,467
Aron Rosenbaum	SA	$425	540.90	$229,882
Comfort Orji	SA	$425	644.20	$273,785
Albert Powell	SA	$425	678.00	$288,160
Jason Saad	SA	$425	480.70	$204,297
Roger Yamada	SA	$425	147.10	$62,517
Ebone Bishop	SA	$425	464.70	$197,497
Nicole Cameron	SA	$425	132.00	$56,100
Mashariki Daniels	SA	$425	562.10	$238,892
Jacqueline Grant	SA	$425	415.80	$176,715
Anuj Vaidya	SA	$425	442.70	$188,147
Betsy Schulman	SA	$425	274.00	$116,450
Ian Herrick	SA	$425	18.20	$7,735
David Packman	SA	$425	20.10	$8,542
Andrea Caruth	PL	$210	571.50	$120,015
TOTAL			**15,302.5**	**$7,460,139**

Partner (P)
Of Counsel (OC)
Associate (A)
Staff Attorney (SA)
Paralegal (PL)
Investigator (I)
Research Analyst (RA)

EXHIBIT B

STATE STREET INDIRECT FX TRADING CLASS ACTION
No. 11-cv-10230, No. 11-cv-12049, No. 12-cv-11698 MLW (D. Mass.)

EXPENSE REPORT

FIRM: THORNTON LAW FIRM, LLP
REPORTING PERIOD: INCEPTION THROUGH AUGUST 30, 2016

EXPENSE	TOTAL AMOUNT
Experts/Consultants	$154,434.47
Work-Related Transportation/Meals/Lodging	$119,970.11
Litigation Fund Contribution	$98,000.00
~~Miscellaneous~~	
TOTAL	**$372,404.58**

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

LIEFF CABRASER HEIMANN & BERNSTEIN LLP'S RESPONSES TO SPECIAL MASTER HONORABLE GERALD E. ROSEN'S (RET.) FIRST SET OF INTERROGATORIES DUE ON JUNE 9, 2017

In accordance with the Federal Rules of Civil Procedure, Lieff Cabraser Heimann & Bernstein, LLP ("LCHB" or the "Firm") hereby responds to Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories (the "Interrogatories"), propounded on LCHB on May 18, 2017, as revised on May 23, 2017, and due on June 9, 2017.

GENERAL OBJECTIONS

LCHB makes the following general objections, which are incorporated by reference into each Interrogatory response, whether or not a specific further objection is made with respect to a specific Interrogatory. Each Interrogatory response incorporates, is subject to and does not waive the general objections.

1. LCHB objects to the Interrogatories and Instructions to the extent they seek information protected by the attorney-client privilege, the attorney work product doctrine, or that otherwise is privileged, protected or exempt from discovery.

2. LCHB objects to the Interrogatories and Instructions to the extent they purport to impose obligations that differ from or exceed those imposed by the Federal Rules of Civil Procedure, particularly Rule 33, and by any court decisions interpreting those Rules.

3. LCHB objects to the Interrogatories and Instructions to the extent they seek information beyond the scope of, or not relevant to, the Courts' February 6, 2017 Memorandum and Order in the above-referenced cases.

4. In responding to the Interrogatories, LCHB has made reasonable efforts to respond based on its understanding and interpretation of each Interrogatory. If the Special Master subsequently asserts a reasonable interpretation of an Interrogatory which differs from that of LCHB, LCHB reserves the right to supplement its responses.

5. LCHB will make all reasonable efforts to respond to the Interrogatories on or before the dates specified in the Special Master's May 23, 2017 revised Interrogatories. LCHB, however, reserves the right to supplement its responses should it require additional time, and/or should responsive information be discovered following the designated dates for the responses.

6. LCHB objects to Definition No. 1 and Instruction B, to the extent they seek Interrogatory responses from any source other than the Law Firm, its partners, associates, of counsel, employees and contractors. LCHB has no "affiliates," and no "agents" or "representatives" that are or would be in the possession of responsive information.

RESPONSES TO THE INTERROGATORIES

INTERROGATORY NO. 17:

Describe in detail all agreements between the Firm/Plaintiffs' Law Firms, on the one hand, and the ERISA firms, on the other, to allocate to the ERISA firms a fixed percentage of the total Fee Award rendered by the Court in the SST Litigation. As to any agreement that did not represent the final agreement for allocation of the Fee Award, explain the reason for modifying a previous agreement, including all persons involved in these discussions and their affiliation/firm.

RESPONSE TO INTERROGATORY NO. 17:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is vague and seeks information that is not relevant to the subject matter of this proceeding. Subject to and without waiving those objections, LCHB responds as follows:

A written agreement dated on or about December 11, 2013 was entered into by Plaintiffs' Law Firms and the ERISA firms to allocate 9 percent of the total Fee Award rendered by the Court in the SST Litigation to the ERISA firms. On or about August 30, 2016, Plaintiffs' Law Firms agreed amongst themselves to increase the percentage of the total Fee Award to be

allocated to the ERISA firms to 10 percent. Mr. Chiplock believes that this was done at the suggestion of Lawrence Sucharow at Labaton, to which counsel from the other Plaintiffs' Law Firms (Michael Thornton, Daniel Chiplock, and Robert L. Lieff) agreed, and that the increase was to recognize the role that certain counsel from the ERISA firms (in particular, Lynn Sarko and Carl Kravitz) played in the mediation and in liaising with the DOL.

Daniel P. Chiplock, LCHB Partner, and Robert L. Lieff, LCHB Of Counsel, have knowledge of the information provided in this Response.

INTERROGATORY NO. 37:

Explain what knowledge, if any, the Firm had about the existence of a cost-sharing agreement(s) (formal or informal) between Labaton and Thornton to allocate and/or share costs for certain of Labaton's Staff Attorneys assigned to work on the SST Litigation.

RESPONSE TO INTERROGATORY NO. 37:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is burdensome to the extent it seeks information LCHB has provided in other Interrogatory responses, or in the production of documents in this proceeding. Subject to and without waiving those objections, LCHB responds as follows:

The Firm was aware that beginning in or shortly after January 2015, both Labaton and LCHB would be either hosting or sharing costs for certain Staff Attorneys with Thornton in order to try to equitably share such costs for the SST Document Review with Thornton. The Firm was not aware of any similar arrangement between Labaton and Thornton prior to that date.

Daniel P. Chiplock, LCHB Partner, has knowledge of the information provided in this Response.

INTERROGATORY NO. 43:

Describe what knowledge, if any, the Firm had in early 2015 about Michael Bradley's involvement in the SST Litigation, including any knowledge of Thornton's agreement to pay Mr. Bradley an agreed-upon rate of $500/hour.

RESPONSE TO INTERROGATORY NO.43:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB responds as follows:

In early 2015, LCHB had no knowledge of Michael Bradley's involvement in the SST Litigation or Thornton's agreement to pay Mr. Bradley an agreed-upon rate of $500/hour.

Daniel P. Chiplock, LCHB Partner, has knowledge of the information provided in this Response.

INTERROGATORY NO. 44:

Identify and describe all communications relating to Michael Bradley's participation in the SST Litigation/SST Document Review from 2010 through November 2016, including relating to compensation or an hourly billing rate that Thornton would charge for Mr. Bradley's time spent on the matter.

RESPONSE TO INTERROGATORY NO. 44:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is overbroad and burdensome to the extent it seeks information not in the possession of LCHB. Subject to and without waiving those objections, LCHB responds as follows:

LCHB was not part of any communications at all relating to Mr. Bradley's participation in the SST Litigation/SST Document Review from 2010 through November 10, 2016. After that

date, LCHB received several emails from attorneys at Labaton and Thornton inquiring whether it was possible to document through the Catalyst database or user data any time that Mr. Bradley spent on the Catalyst database. Mr. Dugar of our Firm confirmed that this was not possible due to the Catalyst database having been taken offline more than a year prior (2015). LCHB was not part of any communications at any time relating to compensation or an hourly billing rate that Thornton would charge for Mr. Bradley's time spent on the matter, and accordingly can identify no such communications.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response. Kirti Dugar, Litigation Support Manager, has knowledge of some of the information provided in this Response.

INTERROGATORY NO. 47:

Explain how the Law Firm determines annual billing rates for all attorneys, including Staff Attorneys. Please identify and describe all factors considered and/or resources relied upon in making these determinations.

RESPONSE TO INTERROGATORY NO. 47:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is vague and overbroad and that it provides no timeframe for the information sought. LCHB further objects to this Interrogatory on the grounds that it is burdensome in that this information was or could have been elicited during the deposition of Steven E. Fineman in this proceeding. Subject to and without waiving those objections, LCHB responds as follows:

LCHB determines annual billing rates for all Firm attorneys, including Staff Attorneys, in January-February of each calendar year. In recent years, as reflected in documents produced by

LCHB in this proceeding, LCHB's billing rates have increased modestly on an annual basis. These annual adjustments are consistent with our understanding of the market rates for other plaintiff-side firms that handle complex and class litigation in the San Francisco and New York markets, where the vast majority of LCHB's attorneys, including Staff Attorneys, practice.

The process by which LCHB's annual billing rates are adjusted includes initial communication between the Firm's Managing Partner, Steven E. Fineman, and the Firm's Director of Operations, Joseph Dragicevic. During that initial communication (or communications), Mr. Fineman and Mr. Dragicevic discuss the changes in the relevant market places for legal services, the accessibility of publicly available information concerning the hourly rates of comparable plaintiff-side law firms and of "big law" firms in the New York and San Francisco markets. Such publicly available information may include publicly filed fee applications or published salary surveys. Based on the Firm's historical hourly rates, the collection of any new and instructive publicly available information about billable rates, and most importantly, based on what courts have said in the preceding year or years about the Firm's rates, Mr. Fineman makes a recommendation to the Firm's Executive Committee on adjustments to the Firm's billable rates for that calendar year. That recommendation is then typically discussed and approved at an Executive Committee meeting or as a result of subsequent e-mail communications or telephone conversations by and among members of the Executive Committee.

With respect to Staff Attorneys specifically, for a number of years prior to 2016, hourly rates were set to be consistent with the rates of "on-track" Firm attorneys with the same or comparable levels of experience. However, as our Staff Attorneys became increasingly experienced and senior, that approach began to result in rates the Firm felt were too high.

Therefore, beginning in 2016, all Firm Staff Attorneys who continued to work at the Firm billed at a rate of $415 per hour (the equivalent of a fourth year "on-track" associate). This rate was determined based on the Firm's understanding of the market for Staff Attorneys performing document review, coding and analysis, and the preparation of issue and witness memoranda in the kind of large complex cases handled by LCHB. The Firm determined this to be a fair and appropriate rate, even though LCHB's Staff Attorneys, by and large, have many more than four years of relevant experience (in the SST litigation, for example, five of the Staff Attorneys have more than 15 years of experience, six have between 10 and 15 years of experience, and six have between 5 and 10 years of experience). The Firm determined to set the same rate for all Staff Attorneys (including attorneys on LCHB's payroll and hired via agencies) beginning in 2016 as the functions of the Staff Attorneys are primarily the same and do not appreciably vary year to year (though the rates may gradually increase as the relevant market dictates). Thus far, courts that have considered our Staff Attorneys' rates have found them appropriate for purposes of lodestar crosscheck or lodestar fee payment.

Steven E. Fineman, LCHB's Managing Partner, has knowledge of the information provided in this Response.

INTERROGATORY NO. 48:

Please explain how the process described above does or does not vary in determining billing rates charged to hourly clients and why.

RESPONSE TO INTERROGATORY NO. 48:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is vague and overbroad and that it provides no timeframe for the information sought. LCHB further objects to this Interrogatory on the grounds that it is

burdensome in that this information was or could have been elicited during the deposition of Steven E. Fineman in this proceeding. Subject to and without waiving those objections, LCHB responds as follows:

Although LCHB is normally compensated for legal services on a contingent fee basis, the Firm has occasionally represented plaintiffs on an hourly basis. In those instances, the Firm has charged its customary hourly rates (*see* Response to Interrogatory No. 47, above) unless otherwise agreed to by LCHB and a specific client. On occasion, the Firm has discounted its hourly rates in negotiation with specific hourly clients.

Steven E. Fineman, LCHB's Managing Partner, has knowledge of the information provided in this Response.

INTERROGATORY NO. 53:

Explain how the Firm adjusts its hourly rates to reflect the geographic region in which a matter is filed/pending. If the Firm does not adjust its rates, explain why not.

RESPONSE TO INTERROGATORY NO. 53:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is vague and overbroad and that it provides no timeframe for the information sought. Subject to and without waiving those objections, LCHB responds as follows:

LCHB does not adjust its hourly rates to reflect the geographic region in which a matter is filed/pending. All of the Firms' "hourly" representations have taken place in California or New York – the principal places of the firm's business. In the vast majority of the Firm's class action cases, fees are provided for on a contingent, percentage of the recovery basis (subject to court approval), and therefore hourly rates are not an essential part of the representation. In

those instances in which a court in a class action case performs a lodestar crosscheck against a percentage of the recovery fee, or awards a fee based on lodestar, the Firm relies on its customary rates (*see* Response to Interrogatory No. 47, above). The Firm has never been advised by a court that its rates are inappropriate or unacceptable because they were not expressly predicated on the market rates in a jurisdiction other than California or New York.[1]

Steven E. Fineman, LCHB's Managing Partner, has knowledge of the information provided in this Response.

INTERROGATORY NO. 56:

Describe in detail how the Firm prepared the Fee Petition and identify all individuals who assisted in the preparation and the nature of their contribution(s).

RESPONSE TO INTERROGATORY NO. 56:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it vague and overbroad, and seeks information that is not relevant to the subject matter of this proceeding. LCHB further objects to the Interrogatory to the extent it seeks attorney work product. Subject to and without waiving those objections, LCHB responds as follows:

Daniel Chiplock prepared the individual Fee Petition for the Firm, which was submitted as an exhibit to the Declaration of Lawrence A. Sucharow in Support of Plaintiffs' Assented-to Motion for Final Approval of Proposed Class Settlement and Plan of Allocation and Final Certification of Settlement Class and Lead Counsel's Motion for an Award of Attorneys' Fees,

[1] A meaningful portion of the Firm's business involves representation of plaintiffs in federal multidistrict litigation proceedings based in jurisdictions throughout the United States. In such proceedings, to the extent the Firm's lodestar is relevant, it is always submitted as it is maintained in the normal course of business by the Firm. The same is true for all other plaintiff-side firms in MDL proceedings.

Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs ("Sucharow Declaration"). Much of the language in the Firm's individual Fee Petition (particularly, the language in paragraph 5) was provided via template by Labaton. Staff in the Firm's Accounting Department supplied lodestar and cost reports for the duration of the SST Litigation to Mr. Chiplock. While drafting and finalizing the Firm's Fee Petition, Mr. Chiplock corresponded with Nicole Zeiss and David Goldsmith at Labaton, who provided edits and requests for formatting changes in the Firm's Fee Petition to Mr. Chiplock. Mr. Chiplock also supplied a small handful of edits to the Sucharow Declaration on or about September 13, 2016, mostly addressing the scope of the Staff Attorneys' work in the SST Litigation and specific questions concerning the settlement in the BNY Mellon Action.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response.

INTERROGATORY NO. 57:

Describe in detail any review or steps taken to scrutinize or verify the time reported by the Law Firm prior to submitting the Firm's Fee Petition/Lodestar calculation. If the answer is none, explain why.

RESPONSE TO INTERROGATORY NO. 57:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that the phrases "scrutinize or verify" is vague. Subject to and without waiving those objections, LCHB responds as follows:

Prior to submitting the Firm's Fee Petition/Lodestar calculation, on at least two separate occasions, Mr. Chiplock examined the Firm's timekeeping records with a particular eye toward ensuring that no time exclusively devoted to unrelated or separate matters (such as time spent on

individual *qui tam* cases or the California Action) was included in the time submitted with the Firm's Fee Petition.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response.

INTERROGATORY NO. 58:

Describe what, if any, steps the Law Firm took to review, verify, or compare the Fee Petitions and/or Lodestar calculations prepared by the Plaintiffs' Firms or ERISA firms with the Firm's Fee Petition prior to filing its Fee Petition with the Court. If no action was taken, explain why not.

RESPONSE TO INTERROGATORY NO. 58:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that the word "verify" is vague. Subject to and without waiving those objections, LCHB responds as follows:

The Firm was not privy to the individual Fee Petitions (whether in draft or final form) and/or complete Lodestar calculations prepared by the other Plaintiffs' Firms or ERISA firms prior to the filing of each Fee Petition with the Court, and thus was not able to review, verify, or compare them with the Firm's Fee Petition. To the best of the Firm's knowledge, only Labaton had access to all of the Plaintiffs' Law Firms Fee Petitions and complete Lodestar calculations before they were filed with the Court on September 15, 2016.

During the life of the SST Litigation, LCHB circulated its then-current lodestar reports to Labaton and/or Thornton on at least three occasions—on or about 12/9/13, 5/15/14, and 5/21/15—each time at the request of either Labaton or Thornton. LCHB reciprocally received Labaton's lodestar reports on at least two occasions—5/27/14 and 6/29/15. However, LCHB

never received a complete and/or current lodestar report from Thornton (with Staff Attorney names and hours identified) before the Fee Petitions were filed with the Court.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response.

INTERROGATORY NO. 59:

Identify and describe all communication the Firm had with the Plaintiffs' Law Firms and/or ERISA counsel relating to the Firm's preparation of the Fee Petition, including but not limited to preparation of the Lodestar calculation, the inclusion of Staff Attorneys for whom Thornton had paid costs, calculation of a Lodestar multiplier, and reasonableness of attorneys' fees.

RESPONSE TO INTERROGATORY NO. 59:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is vague, overbroad and seeks information that is not relevant to the subject matter of this proceeding. LCHB further objects to this Interrogatory to the extent it seeks attorney work product. LCHB further objects to this Interrogatory on the grounds that it is burdensome to the extent responsive communications have been or will be produced in this proceeding. Subject to and without waiving those objections, LCHB responds as follows:

The Firm communicated principally with attorneys at Labaton relating to the Firm's preparation of its Fee Petition, which took place between August 31 and September 15, 2016, and these communications (principally between Mr. Chiplock of LCHB and Mr. Goldsmith and Ms. Zeiss at Labaton) related primarily to (a) the circulation of a template for the Fee Petition by Labaton, (b) making minor lodestar adjustments requested by Labaton (such as removing any timekeepers with fewer than 5 hours), (c) confirming the Firm's litigation fund contributions and

expert costs during the SST Litigation, (d) the inclusion of Robert L. Lieff's costs and lodestar in the Firm's Fee Petition, (e) presenting time and cost information in a uniform format, and (f) one email received by LCHB late in the evening on 9/14/16 (the evening before the Fee Petitions were filed) in which Labaton provided the total lodestar number (and resulting multiplier when compared to the requested 25% fee) for all Plaintiffs' Firms and ERISA firms.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response.

INTERROGATORY NO. 60:

Identify all individuals at the Firm who reviewed, assisted or contributed to the preparation and submission of Thornton's Fee Petition and, if appropriate, describe the nature of their contributions.

RESPONSE TO INTERROGATORY NO. 60:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it lacks foundation. LCHB further objects to this Interrogatory that it is burdensome to the extent it seeks information not in the possession of LCHB. Subject to and without waiving those objections, LCHB responds as follows:

No individuals at the Firm reviewed, assisted or contributed to the preparation and submission of Thornton's Fee Petition.

Daniel P. Chiplock, LCHB Partner, has knowledge of the information provided in this Response.

INTERROGATORY NO. 62:

Identify all billing entries, costs and/or expenses incurred by the Firm during the SST Litigation that the Firm did not include in its Fee Petition/Lodestar calculation and the reasons therefor.

RESPONSE TO INTERROGATORY NO. 62:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it seeks information that is not relevant to the subject matter of this proceeding. Subject to and without waiving those objections, LCHB responds as follows:

Time entries for any personnel who worked minimal (fewer than 5) hours in the SST Litigation were not included in the Firm's Fee Petition/Lodestar calculation. This is a fairly routine modification to lodestar reports in complex class cases such as this. The deleted attorney time and lodestar for the Firm included the following: 0.5 hours by Robert J. Nelson totaling $437.50, 1.6 hours by Kathryn E. Barnett totaling $1,200.00, 0.7 hours by Rachel J. Geman totaling $490.00, 0.1 hours by Roger Heller totaling $62.50, 0.8 hours by Sharon E. Lee totaling $480.00, 3.3 hours by Nancy Chung totaling $1,617.00, 2 hours by Pamela Owens totaling $830.00, and 2.8 hours by Bruce W. Leppla totaling $1,918.00. The deleted staff-level time and lodestar entries (predominantly for paralegals and research associates) included a combined 19.8 hours by 11 timekeepers, totaling $6,094.50.

The Firm also did not include any time entries for time expended preparing the Firm's Fee Petition/Lodestar calculation, for the final approval hearing on November 2, 2016, or on time otherwise expended on settlement issues between August 30, 2016 and November 8, 2016. This time and lodestar totaled 43.7 hours (37 hours by Daniel Chiplock, 2.8 hours by Robert L.

Lieff, 3.8 hours by Michael J. Miarmi, and 0.1 hours by Paralegal Alexander Zane), or $32,011.00 (at current rates).

With respect to costs and expenses, any unreimbursed costs incurred by the Firm in connection with the SST Litigation are minimal. In responding to this Interrogatory, the Firm is not including any time or expense associated with the Special Master's inquiry.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response.

INTERROGATORY NO. 63:

Explain the significance of the statement made in Paragraph 5 to the *Declaration of Daniel P. Chiplock on Behalf of Lieff Cabraser Heimann & Bernstein, LLP In Support of Lead Counsel's Motion for An Award of Attorneys' Fees and Payment of Expenses* (Docket #104-17), affirming that the hourly rates included in Exhibit A to the Declaration are the Firm's "regular rates charged for their services, which have been accepted in other complex class actions." Please describe any other instances in which the Firm has submitted a Fee Petition with the same or similar language.

RESPONSE TO INTERROGATORY NO. 63:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that the word "significance" and the phrase "…or similar language" are vague and overbroad. LCHB further objects to this Interrogatory on the grounds that it is vague and overbroad and seeks information not relevant to the subject matter this proceeding in that no timeframe is placed on the request for a description of fee applications in other LCHB cases. LCHB further objects that it would be unduly burdensome to collect and review every Firm fee petition, without regard to a specific timeframe, to determine instances in which the

Firm submitted a fee petition with "similar language" to that used in the *Declaration of Daniel P. Chiplock* in the SST litigation. Subject to and without waiving those objections, LCHB responds as follows:

The language quoted in this Interrogatory was intended to signify that the rates reflected in the Firm's Fee Petition are the Firm's regular rates which have been routinely accepted in other complex class actions for purposes of a lodestar cross-check. LCHB has also charged the same or comparable rates to paying clients of the Firm in non-contingent fee cases. The Firm submitted a Fee Petition in the BNY Mellon Action with language that conveyed the same information, and has done the same in fee petitions in other complex class actions.

Daniel P. Chiplock, LCHB Partner, has knowledge of the information provided in this Response as it relates to his Declaration in the SST litigation. Steven E. Fineman, LCHB's Managing Partner, has knowledge of the information provided in this Response regarding "other instances" in which the firm has submitted a fee petition with "the same or similar language" to that used in the *Declaration of Daniel P. Chiplock* in the SST litigation.

INTERROGATORY NO. 64:

Do you contend that the rates listed in the Firm's Fee Petition represent the prevailing rates in the community for similar services performed by lawyers of reasonably comparable skill, experience and reputation for each of the respective tasks performed? Why or why not?

RESPONSE TO INTERROGATORY NO. 64:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB responds as follows:

For the reasons stated in Response to Interrogatory No. 47, above, LCHB answers this Interrogatory in the affirmative. Most fee awards in the Firm's class action cases have been

awarded on a percentage of the recovery basis. In recent years, some courts have conducted a "lodestar cross-check" to determine that the percentage of the recovery award is not excessive. And, in rare cases, courts have determined our class action fees on a lodestar basis. In both the cross-check and lodestar fee award contexts, LCHB's hourly rates, including those of our Staff Attorneys, are routinely included and approved in class action fee awards. For example:

- *In re Bank of New York Mellon Corp. Forex Transactions Litigation*, 12-md-2335 LAK (S.D.N.Y.) – Over 28,000 hours of Staff Attorney time, involving many of the same Staff Attorneys at issue here and at roughly the same hourly rates applied in the SST Litigation, were included as part of the lodestar cross-check conducted by Judge Kaplan in approving class counsel's requested attorneys' fees. At the final fairness and attorney fee hearing, Judge Kaplan of the Southern District of New York said, in part: "This was an outrageous wrong committed by the Bank of New York Mellon, and plaintiffs' counsel deserve a world of credit for taking it on, for running the risk, for financing it and doing a great job. I accept the lodestar. I accept as fair, reasonable and accurate everything that went into it."
- *Allagas, et al. v. BP Solar International, Inc., et al.*, 3:14-cv-00560-SI (N.D. Ca.) – In 2016, Judge Illston of the Northern District of California approved a percentage of the recovery fee for LCHB and co-class counsel but also conducted a lodestar cross-check. Judge Illston concluded that the Firm's "hourly rates, used to calculate the lodestar here, are in line with prevailing rates in this District and have recently been approved by federal and state courts." Judge Illston's lodestar

cross-check included two LCHB Staff Attorneys billed at $415 per hour, the same as most of the Staff Attorneys in the SST Litigation.

- *In re High Tech Employee Antitrust Litigation*, No. 11-cv-02509-LHK (N.D. Ca.) – In this complex antitrust class action in 2015, Judge Koh of the Northern District of California awarded LCHB and its co-lead counsel attorneys' fees based on the lodestar methodology. Judge Koh found:

> Having reviewed the billing rates for the attorneys, paralegals, litigation support staff at each of the firms representing Plaintiffs in this case [including co-lead counsel LCHB], the Court finds these rates are reasonable in light of prevailing market rates in this district and that counsel for Plaintiffs have submitted adequate documentation justifying those rates.

Judge Koh further found in *High Tech* that the "billing rates submitted vary appropriately based on experience," and found that the "billing rates for non-partner attorneys, including senior counsel, counsel, senior associates, associates and staff attorneys, range from about $310 to $800, with most under $500." (Emphasis added.). LCHB's lodestar submission included a number of Staff Attorneys whose hourly rates were consistent with the rates submitted in the SST Litigation a year later.

- *In re TFT-LCD (Flat Panel) Antitrust Litigation*, MDL 3:07-md-1827 SI (N.D. Ca.) – In 2011, Judge Illston approved a percentage of the fee recovery for LCHB and its co-lead counsel "and confirmed" the fee by a lodestar cross-check. Included in LCHB's lodestar submission was the time of several Staff Attorneys whose rates ranged from $385 to $475 per hour in 2011 when the fee submission was made.

Steven E. Fineman, LCHB's Managing Partner, has knowledge of the information provided in this Response.

INTERROGATORY NO. 66:

Describe when and how the Law Firm first learned about the Boston Globe's inquiry into the Fee Award, and underlying billing practices employed by the Firm and other counsel in the SST Litigation, that preceded the publication of the December 17, 2016 Article.

RESPONSE TO INTERROGATORY NO. 66:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it lacks foundation in that the firm is not aware that the Boston Globe is engaged in an inquiry into the "underlying billing practices employed by the Firm." LCHB further objects to this Interrogatory on the grounds that the suggestion in the Interrogatory that the Boston Globe is inquiring into the "underlying billing practices employed by the Firm" is argumentative. LCHB further objects to this Interrogatory on the ground that it seeks information that is not relevant to the subject matter of this proceeding. Subject to and without waiving those objections, LCHB responds as follows:

The Firm first learned about the Boston Globe's inquiry into the Fee Award by way of a telephone call from David Goldsmith at Labaton to Daniel Chiplock of LCHB on November 8, 2016. The Boston Globe has not, to the Firm's knowledge, questioned LCHB's "billing practices," and notably omitted to report (as disclosed at the March 7, 2017 hearing before Judge Wolf, at which the Boston Globe was present) that LCHB has charged paying clients regular market rates that are the same or comparable to those reported in LCHB's Fee Petition. The Firm has never been contacted by the Boston Globe in this matter, either before the December 17, 2016 Article or afterwards.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response.

INTERROGATORY NO. 67:

Describe when and how the Law Firm first identified duplicative billing entries reflected in the Firm's Fee Petition and describe all actions taken by the Firm to review, confirm, and/or correct those errors.

RESPONSE TO INTERROGATORY NO. 67:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that the phrase "duplicative billing entries" lacks foundation and is argumentative in that LCHB did not "bill" any client in this case. LCHB submits the proper inquiry should be when and how LCHB first identified duplicative "time" entries reflected in the *Declaration of Daniel P. Chiplock.* Subject to and without waiving those objections, LCHB responds as follows:

The Firm first identified duplicative time entries reflected in the Firm's Fee Petition on November 9, 2016. Mr. Chiplock identified the duplicative time entries (a) by re-tracing prior email correspondence between and among Firm personnel and personnel from the other Plaintiffs' Law Firms during the early to mid-2015 timeframe, (b) through confirmatory emails from Mr. Diamand, the Firm's Accounting Department, and counsel at Thornton, (c) by re-reviewing the detailed lodestar reports for the Staff Attorneys whom LCHB either shared with or hosted for Thornton, and (d) reviewing Thornton's Fee Petition.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response.

INTERROGATORY NO. 68:

Describe in detail how the Law Firm participated in the drafting of the November 10, 2016 Letter, including the full names of all individuals who contributed to the Letter, the nature of any internal review by the Firm, and all individuals outside the firm who reviewed and/or contributed to the Letter and the nature of their contribution(s).

RESPONSE TO INTERROGATORY NO. 68:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that the "how" and phrase "internal review" are vague. LCHB further objects to this Interrogatory on the grounds that the requests for information concerning individuals "outside the firm who reviewed and/or contributed to the Letter" lacks foundation. Subject to and without waiving those objections, LCHB responds as follows:

Mr. Chiplock reviewed and contributed edits to the November 10, 2016 Letter during its drafting. Robert L. Lieff, Of Counsel to the Firm, also reviewed and contributed some edits to the November 10, 2016 Letter. A draft of the November 10, 2016 Letter also was circulated to Steven E. Fineman, the Firm's Managing Partner, and to the Firm's Executive Committee prior to its submission to the Court.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response. Richard M. Heimann, LCHB Partner, Steven E. Fineman, LCHB Managing Partner, and Robert L. Lieff, LCHB Of Counsel, also have some knowledge of some of the information provided in this Response.

INTERROGATORY NO. 69:

Identify and describe all documents relied upon by the Law Firm in the drafting of the November 10, 2016 Letter.

RESPONSE TO INTERROGATORY NO. 69:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB responds as follows:

In reviewing and contributing edits to the November 10, 2016 Letter, the Firm relied upon the same documents identified in response to Interrogatory No. 67 above.

Daniel P. Chiplock, LCHB Partner, has knowledge of the information provided in this Response.

INTERROGATORY NO. 72:

Identify, in detail, any additional errors in your any communication with the Court or with the Special Master, since filing of the Fee Petition(s) and explain each step or action taken to correct each error, including all documents or information consulted or relied upon in making the correction(s).

RESPONSE TO INTERROGATORY NO. 72:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that the phrase "additional" errors is vague. LCHB understands the question to be whether we have identified errors in the Fee Petition, specifically the *Declaration of Daniel P. Chiplock*, in addition to or other than those described in the November 10, 2016 Letter. Subject to and without waiving those objections, LCHB responds as follows:

Since filing the corrective letter on November 10, 2016, the Firm has identified the inadvertent and erroneous inclusion in the firm's Lodestar total for the SST Litigation of 4 hours on 5/11/14 by Michael J. Miarmi, LCHB Partner, for an unrelated matter with a similar internal LCHB timekeeping number. We believe this time was included in the firm's Lodestar total for the SST Litigation due to keystroke error, and it has since been moved over to the appropriate

matter. This error was disclosed in a communication to Counsel for the Special Master on March 23, 2017, and corrected at that time.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response.

INTERROGATORY NO. 73:

Identify and explain any mistakes you have identified in the Fee Petition, Motion for Attorneys' Fees, and/or Fee Award, not described above.

RESPONSE TO INTERROGATORY NO. 73:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB responds that it has not identified any other mistakes in its Fee Petition or the Motion for Attorney's Fees not described above or in the November 10, 2017 Letter. The Firm does not believe there was a mistake in the Fee Award.

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response.

INTERROGATORY NO. 74:

Identify any other individuals, not listed above, who have knowledge of the Interrogatories and/or the SST Litigation and explain the general nature of such knowledge.

RESPONSE TO INTERROGATORY NO. 74:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB responds that there are no individuals at the Firm with knowledge material to the Firm's Responses to the Interrogatories that are not otherwise mentioned or identified in these Responses (including those Responses that were served previously or those to be served on July 10). As for other individuals at the Firm with knowledge of the SST Litigation

generally, the firm refers to the Firm's Fee Petition and the timekeepers listed therein as having knowledge specific to their assignments or involvement in the SST Litigation, as reflected in their detailed timekeeping entries (which have been produced).

Daniel P. Chiplock, LCHB Partner, has the most knowledge of the information provided in this Response.

Dated: June 9, 2017

Respectfully submitted,

Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111
415-956-1000

By: _____
Richard M. Heimann
Attorney for Lieff Cabraser Heimann & Bernstein, LLP

Exhibit B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 11-cv-10230 MLW
ARNOLD HENRIQUEZ, *et al.*, Plaintiffs, 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, *et al.*, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 12-cv-11698 MLW

LABATON SUCHAROW LLP'S RESPONSE TO SPECIAL MASTER HONORABLE GERALD E. ROSEN'S (RET.) FIRST SET OF INTERROGATORIES TO LABATON SUCHAROW LLP – JUNE 9 RESPONSE

Labaton Sucharow LLP ("Labaton Sucharow" or the "Firm") responds as follows to the Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories to Labaton Sucharow LLP ("First Interrogatories"). This response addresses those interrogatories that, following conferral with counsel to the Special Master, are to be provided on June 9, 2017.

Labaton Sucharow's answers are based solely on the facts and contentions presently known. To the extent Labaton Sucharow answers any Interrogatory, it does so without waiving any rights or objections and expressly reserves all rights and objections. Labaton Sucharow's answers to the Interrogatories are made without waiving the right to: (i) amend, modify or supplement the answers and objections stated herein, if necessary; (ii) rely on any facts, documents or other evidence which may develop or come to Labaton Sucharow's attention at a later date; and (iii) rely upon, reference or put into evidence additional expert information, testimony or reports.

GENERAL OBJECTIONS

The following General Objections are incorporated by reference into each response to the First Interrogatories, whether or not they are referenced in a specific response below.

1. Labaton Sucharow objects to Definition No. 1 as overbroad, irrelevant, and lacking in proportionality. Per agreement of counsel to the Special Master, Labaton Sucharow will construe the term "you", "your", "the Firm", and "the Law Firm" to refer to Labaton Sucharow, LLP, and its employees.

2. Labaton Sucharow objects to the First Interrogatories to the extent they seek information protected by the attorney-client privilege, the work product doctrine, or information that otherwise is privileged, protected or exempt from discovery. To the extent that Labaton Sucharow has provided any answers below that may include information that is privileged or

protected as work product, the Firm provides such answers pursuant to the Limited Protective Order of the Special Master Relating to Attorney/Client Privileged and Work Product Documents and Information Being Provided to the Special Master (ECF No. 191). Pursuant to this protective order, the provision of information to the Special Master does not constitute a waiver of the attorney-client privilege or work product protection.

3. Labaton Sucharow objects to the First Interrogatories to the extent they purport to impose obligations that differ from or exceed those imposed by the Federal Rules of Civil Procedure, particularly Rule 33, and by any court decisions interpreting those Rules.

4. Labaton Sucharow objects to the First Interrogatories to the extent they seek information beyond the scope of, or not relevant to, the Courts' February 6, 2017 Memorandum and Order in the above-referenced cases.

5. In responding to the First Interrogatories, Labaton Sucharow has made reasonable efforts to respond based on its understanding and interpretation of each Interrogatory. If the Special Master subsequently asserts a reasonable interpretation of an Interrogatory which differs from that of Labaton Sucharow, Labaton Sucharow reserves the right to supplement its responses.

6. Labaton Sucharow reserves the right to supplement its answers should additional responsive information be discovered following the designated dates for responses.

7. Capitalized terms shall have the meanings set forth in the First Interrogatories, subject to any objections asserted herein. All other capitalized but undefined terms used in this response have the same meanings as set forth in the Stipulation and Agreement of Settlement (ECF No. 89).

LABATON SUCHAROW'S OBJECTIONS AND ANSWERS

INTERROGATORY 16:

Describe in detail all agreements between the Firm/Plaintiffs' Law Firms, on the one hand, and the ERISA firms, on the other, to allocate to the ERISA firms a fixed percentage of the total Fee Award rendered by the Court in the SST Litigation. As to any agreement that did not represent the final agreement for allocation of the Fee Award, explain the reason for modifying a previous agreement, including all persons involved in these discussions and their affiliation/firm.

RESPONSE TO INTERROGATORY 16:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: In December 2013, Labaton Sucharow, Lieff Cabraser, and Thornton entered into the "Agreement Between Counsel for Consumer and ERISA Plaintiffs Regarding Division of Attorneys' Fees," dated as of December 11, 2013, with: McTigue Law LLP; Zuckerman Spaeder LLP; Beins, Axelrod, P.C.; Richardson, Patrick, Westbrook & Brickman; and Keller Rohrback L.L.P ("ERISA Fee Agreement"). The ERISA Fee Agreement provided that the parties thereto agreed that any attorneys' fees awarded by the Court in connection with the Class Actions would be divided 91% to Plaintiffs' Law Firms and 9% to ERISA counsel. The ERISA Fee Agreement contained various other provisions concerning, among other things, that the division of fees applied regardless of whether the Court awarded a single sum for all claims or not, that each counsel remained responsible for representing their own clients, and that the agreement did not relate to expenses.

Subsequently, at some point prior to the Final Approval Hearing on November 2, 2016, Lawrence Sucharow of Labaton suggested to Garrett Bradley of Thornton Law, and Daniel Chiplock and Robert Lieff of Lieff Cabraser, that in light of (i) the efforts of ERISA counsel in assisting with achieving the global settlement of the Class Actions and (ii) that the Indirect FX Trading Volume of class members that are ERISA Plans or eligible Group Trusts was greater

than what was understood to be the case at the time of the execution of the ERISA Fee Agreement, that the 9% contractual commitment should be voluntarily supplemented by the Plaintiffs' Law Firms by an additional 1%, thus increasing the allocation to ERISA counsel to 10%. The Thornton and Lieff Cabraser firms agreed. There is no written agreement with ERISA counsel concerning this voluntary supplement.

INTERROGATORY 36:

Explain what knowledge, if any, the Firm had about the existence of a cost-sharing agreement(s) (formal or informal) between Lieff Cabraser and Thornton to allocate and/or share costs for certain of Lieff's Staff Attorneys assigned to work on the SST Litigation.

RESPONSE TO INTERROGATORY 36:

The Firm incorporates the General Objections set forth above, and construes this interrogatory to refer to the period during the SST Litigation. Subject to and without waiving the foregoing objections, the Firm states the following:

Some attorneys at Labaton Sucharow, including Michael Rogers and David Goldsmith but not including Nicole Zeiss, generally knew that certain of Lieff Cabraser's Staff Attorneys assigned to work on the SST Litigation would be paid for by Thornton. By implication, the Firm generally knew of the existence of a cost-sharing agreement between Lieff and Thornton to allocate and/or share costs for those Staff Attorneys assigned to work on the SST Litigation. The Firm had no knowledge of the specific terms of such cost-sharing agreement.

INTERROGATORY 40:

Describe what knowledge, if any, the Firm had in early 2015 about Michael Bradley's involvement in the SST Litigation, including any knowledge of Thornton's agreement to pay Mr. Bradley an agreed-upon rate of $500/hour.

RESPONSE TO INTERROGATORY 40:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: Based on a review of documents in connection with the Special Master's investigation, the Firm has identified an email dated May 20, 2014, from Michael Lesser of Thornton to David Goldsmith of Labaton Sucharow, which set forth Thornton's "document review hours, excluding mine [Mr. Lesser's]." The e-mail listed four document reviewers: "Mike Bradley (attorney)"; "Andrea Carruth (paralegal)"; "Jotham Kinder (attorney)"; and "Evan Hoffman (attorney)". The e-mail did not indicate hourly rates for these four persons. The names Mike Bradley, Andrea Carruth, and Jotham Kinder had no particular significance to Mr. Goldsmith at the time.

INTERROGATORY 41:

Identify and describe all communications relating to Michael Bradley's participation in the SST Litigation/SST Document Review from 2010 through November 2016, including relating to compensation or an hourly billing rate that Thornton would charge for Mr. Bradley's time spent on the matter.

RESPONSE TO INTERROGATORY 41:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm identifies the following communications and sets of communications relating to Michael Bradley's participation in the SST Litigation/SST Document Review from 2010 through November 2016, including relating to compensation or an hourly billing rate that Thornton would charge for Michael Bradley's time spent on the matter:

(a) The May 20, 2014 e-mail described in the Answer and Objections to Interrogatory No. 40 above.

(b) E-mail communications between Thornton and Labaton Sucharow during September 2016 attaching draft and final Thornton lodestar reports. The lodestar reports listed Michael Bradley as a Staff Attorney at an hourly

billing rate of $500. His listing was not noticed by the Firm and to the best of available recollections there were no discussions about it during the process of finalizing the Fee Petition.

(c) An e-mail dated November 1, 2016 from Garrett Bradley of Thornton to Nicole Zeiss of Labaton Sucharow, asking: "How many hours did my brother put in on state street and how much was his rate?" Ms. Zeiss forwarded the e-mail internally to David Goldsmith and asked: "Do you have any idea what he is talking about?" Ms. Zeiss separately replied to Mr. Bradley and asked: "Who is your brother?" Mr. Goldsmith replied to Ms. Zeiss: "Garrett's lodestar report shows Michael Bradley did 406.4 hrs at $500/hr. I have a feeling he was one of the STAs here who was assigned to Thornton." Ms. Zeiss then further replied to Mr. Goldsmith and stated "Ya, I just saw that and told him." Ms. Zeiss does not recall whether she communicated the number of hours and hourly rate to Mr. Bradley by e-mail or by telephone.

(d) A telephone conversation on November 8, 2016 between Garrett Bradley and David Goldsmith. On that date, Mr. Bradley called Mr. Goldsmith and told Mr. Goldsmith that a reporter from the *Boston Globe* had called Mr. Bradley earlier that day with questions about, among other things, Michael Bradley's involvement in the SST Litigation and his hourly rate. Garrett Bradley's reference to "my brother" during the call led Mr. Goldsmith to understand that Michael Bradley is Garrett Bradley's brother.

(e) An e-mail dated November 16, 2016 from Andrea Estes, a reporter with the *Boston Globe*, to David Goldsmith and Brian Kelly and Jim Vallee of Nixon Peabody. Ms. Estes's e-mail referenced Thornton's fee affidavit and asked Mr. Goldsmith, among other questions, if he knew "that Garrett Bradley's brother, who does district court defense work, was included at $500 an hour?" Mr. Goldsmith promptly forwarded the e-mail internally to the Firm's Executive Committee, Michael Stocker (a partner who serves as the Firm's General Counsel), and the internal team responsible for media relations.

Answering further, pursuant to Fed. R. Civ. P. 33(d), the Firm references its production in response to Special Master Honorable Gerald E. Rosen's (Ret.) First Request for the Production of Documents, Request Nos. 52-55.

INTERROGATORY 44:

Explain how the Law Firm determines annual billing rates for all attorneys, including Staff Attorneys. Please identify and describe all factors considered and/or resources relied upon in making these determinations.

RESPONSE TO INTERROGATORY 44:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: On an annual basis, the Firm does a comprehensive nationwide analysis of comparable law firm billing rates thru many public sources of information. The first step in the process involves compiling a list of law firms to research, based (among other things) on previous reports. The list is populated with firms that Labaton Sucharow typically litigates with, on the plaintiff side, and against, on the defense side.

The billing rates data is then collected from various filings that are available on PACER. Generally, defense lodestars come from monthly and interim fee applications filed during bankruptcy proceedings. Once this data is gathered in PDF format, it is manually input into Microsoft Excel, where it is organized and further exported to Microsoft Access. The Firm then uses Excel to assemble the comparative portions of its report, and Access to generate formatted representations of the individual billing rates retrieved from the lodestars (the "raw data"). The Firm then breaks down, by firm, the billing rates of employees in various positions (by title) in order to view the lowest, highest, and average rates charged under each title, as well as where the rates rank (by percentile) as compared to the entire cohort of firms. Each firm's data is then compared to its data from previous years.

The results of this exercise are presented to the Billing Rate Sub-Committee. The Sub-Committee reviews the research and makes recommendations on changes for each individual Firm attorney, including staff attorneys, generally in response to changes in market rates

revealed by the data collected, as well as increased seniority and promotions. Once all of the changes are finalized, the recommendation of the Sub-Committee is submitted to the Executive Committee for approval. Generally the Sub-Committee meets in December and makes recommendations for rates to be used in the following calendar year.

Once the Executive Committee approves the rates, they are submitted to the Firm's accounting department so that rate change adjustments can be made on the Firm's accounting system, with an effective date of January 1st of the following year.

INTERROGATORY 45:

Please explain how the process described above does or does not vary in determining billing rates charged to hourly clients and why.

RESPONSE TO INTERROGATORY 45:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: The Billing rates approved are the standard billing rates in the uncommon circumstance when we have hourly clients who pay by invoice.

INTERROGATORY 51:

Explain how the Firm adjusts its hourly rates for cases brought outside of New York. If the Firm does not adjust its rate, explain why not.

RESPONSE TO INTERROGATORY 51:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: The Firm does not have a practice of adjusting its standard hourly rates for cases brought outside of New York. The Firm does not adjust is standard hourly rates for cases outside of New York, because our practice areas and cases are complex civil litigations that are typically national in scope. The defendants in our

cases are represented by many of the largest and most prominent law firms in the world, with billing rates that match their experience and the complexity of their practices. The Supreme Court has explained that a fee applicant should show that "the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation. A rate determined in this way is normally deemed to be reasonable, and is referred to – for convenience—as the prevailing market rate." *Blum v. Stenson*, 465 U.S. 886, 896 n. 11 (1984). Based on the Firm's annual review as discussed in response to Interrogatory No. 44 above, including its annual review of bankruptcy fee petitions filed nationwide and the rates in those fee petitions, the Firm believes that its rates are commensurate with the rates used by national peer plaintiff and defense-side law firms litigating matters of a similar magnitude.

INTERROGATORY 54:

Describe in detail how the Firm prepared the Fee Petition and identify all individuals who assisted in the preparation and the nature of their contribution(s).

RESPONSE TO INTERROGATORY 54:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: The Firm prepared the Fee Petition essentially as follows. The 47-page Declaration of Lawrence A. Sucharow (ECF No. 104), or "Omnibus Declaration," was drafted by David Goldsmith of Labaton Sucharow. Nicole Zeiss of the Firm prepared an initial framework, which Mr. Goldsmith took from there through filing. Internally, Mr. Goldsmith invited comments from Lawrence Sucharow (Chairman of the Firm), Eric Belfi (the relationship partner for ARTRS), and Ms. Zeiss. A draft was provided to George Hopkins of ARTRS as well. Externally, Mr. Goldsmith invited comments from Michael Thornton, Garrett Bradley, Michael Lesser, and Evan Hoffman of Thornton; Robert Lieff, Daniel

Chiplock, and Michael Miarmi of Lieff Cabraser; Lynn Sarko and David Copley of Keller Rohrback; Carl Kravitz of Zuckerman Spaeder; and Brian McTigue and Regina Markey of McTigue Law. The draft Omnibus Declaration included information and drafting contributed by Mr. Lesser, Mr. Chiplock, and Mr. Copley concerning damages issues, the similar *Bank of New York Mellon* FX litigation, and aspects of the ERISA claims, and these three attorneys provided comments on the draft submission. Finally, as a courtesy, Mr. Goldsmith provided a near-final version of the Omnibus Declaration to William Paine, Daniel Halston, and Timothy Perla of WilmerHale, counsel for State Street.

With respect to relevant exhibits to the Omnibus Declaration, Mr. Goldsmith prepared the Declaration of George Hopkins (Ex. 1, ECF No. 104-1) for his approval and signature after seeking certain factual information and comments and approval internally. Mr. Goldsmith also had a role in the preparation of the Declaration of Jonathan B. Marks, the mediator (Ex. 5, ECF No. 104-5), to which Mr. Chiplock also contributed. The Firm had no role in the preparation of the declarations of the ERISA Plaintiffs (Exs. 7-12, ECF Nos. 104-7 to 104-12).

Ms. Zeiss was responsible for preparing the individual fee and expense Declaration of Lawrence Sucharow (Ex. 15, ECF No. 104-15), and for soliciting and coordinating the receipt of comparable fee and expense declarations from Thornton, Lieff Cabraser, Keller Rohrback, Zuckerman Spaeder, McTigue Law, Beins Axelrod, Feinberg Campbell, and Richardson Patrick (Exs. 16-23, ECF Nos. 104-16 to 104-23). Howard Goldberg, Labaton Sucharow Litigation Coordinator, assisted Ms. Zeiss in these tasks.

With respect to the Firm's individual fee and expense declaration, Ms. Zeiss first worked with Mr. Goldberg to complete the template for the Firm. Mr. Goldsmith, Mr. Rogers, and Mr. Sucharow contributed to the narrative discussion of the Firm's role in the litigation.

To prepare the lodestar exhibit (Exhibit A), consistent with her standard practice when preparing a fee petition, Ms. Zeiss requested that Mr. Goldberg provide her with an Excel spreadsheet containing all time entries recorded by the Firm's timekeepers in the SST Litigation. Ms. Zeiss reviewed the time entries generally to confirm that the work billed to the SST Litigation related to the litigation and was reasonable. As a result of this review, some time entries, and their associated lodestars, were written-off. (Please see the Firm's answer to Interrogatory No. 60 for additional information.) After the review was complete, Mr. Goldberg prepared Exhibit A to the Firm's individual declaration.

To prepare the expense exhibit (Exhibit B) and the litigation fund exhibit (Exhibit C), Mr. Goldberg provided Ms. Zeiss with Excel spreadsheets containing each of expenses billed to the litigation. Ms. Zeiss reviewed the spreadsheets and raised questions with Mr. Goldberg as needed. As a result of this review, some expenses were written-off. (Please see the Firm's answer to Interrogatory No. 60 for additional information.) After the review, Mr. Goldberg prepared drafts of Exhibits B and C, which Ms. Zeiss also reviewed and commented on. When Ms. Zeiss's review was complete, Mr. Goldberg prepared final versions of Exhibits B and C, which were included in the Firm's individual declaration.

With respect to the individual fee and expense declarations other than the Firm's own, Ms. Zeiss began by e-mailing a shell, or template, declaration and exhibits to Thornton, Lieff Cabraser, Keller Rohrback, Zuckerman Spaeder, and McTigue Law, with instructions. Ms. Zeiss asked ERISA Counsel to share the template with Beins Axelrod, Feinberg Campbell, and Richardson Patrick. During a period of approximately one week before the Fee Petition was filed, drafts of each firm's declaration, with draft exhibits, were provided to Ms. Zeiss. Ms.

Zeiss reviewed all of the declarations and lodestar reports for form, and provided comments to each of the firms, either directly or, in some instances, through McTigue Law.

Ms. Zeiss reviewed all of the expense reports for form and substance, and communicated with counsel so that the expense categories were consistent across the expense reports, and that the reported expenses were clear and reasonable. As a result of these discussions, some expenses were reduced. Ms. Zeiss also discussed the drafts internally with Mr. Goldsmith and Mr. Rogers, particularly the descriptions of each firm's role in the litigation.

Ms. Zeiss prepared the Master Lodestar and Expense Chart (Ex. 24, ECF No. 104-24) from the data in the final fee and expense declarations. Exhibit 25 (ECF No. 104-25), a compilation of defense law firms' billing rates gathered from bankruptcy court filings in 2015, was not prepared for the Fee Petition in this action. Rather, Exhibit 25 was prepared by the Firm in connection with the Firm's Rate Sub-Committee's annual review of billing rates.

INTERROGATORY 55:

Describe in detail any review or steps taken to scrutinize or verify the time reported by the Law Firm prior to submitting the Firm's Fee Petition/Lodestar calculation. If the answer is none, explain why.

RESPONSE TO INTERROGATORY 55:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: Prior to submitting the Firm's Fee Petition/Lodestar calculation, and consistent with her standard practice when preparing a fee petition, Nicole Zeiss requested that Howard Goldberg provide her with an excel spreadsheet containing all time entries recorded by the Firm's timekeepers in the SST Litigation. Ms. Zeiss reviewed the time entries generally to confirm that the work billed to the SST Litigation related to the litigation and was reasonable. As a result of this review, some time entries, and their

associated lodestars, were removed from the Firm's Fee Petition. (Please see the Firm's answer to Interrogatory No. 60 for additional information.)

INTERROGATORY 56:

Describe what, if any, steps the Law Firm took to review, verify, or compare the Fee Petitions and/or Lodestar calculations prepared by the Plaintiffs' Firms or ERISA firms with the Firm's Fee Petition prior to filing its Fee Petition with the Court. If no action was taken, explain why not.

RESPONSE TO INTERROGATORY 56:

The Firm incorporates the General Objections set forth above and its answer to Interrogatory No. 54 above. Subject to and without waiving the foregoing objections, the Firm states the following: It was not Ms. Zeiss' practice, at the time, to engage in any detailed review of the lodestar supplied in fee and expense declarations from other firms, because she in general had no access to the time records of other firms and thus no means of "checking" reported lodestar in another firm's fee declaration. To that extent, Ms. Zeiss relies in large part on the diligence performed by the other firms submitting fee declarations in connection with a fee petition. Similarly, Ms. Zeiss did not have a usual practice of *comparing* lodestars reported in other firms' individual fee declarations, because ordinarily there is no reason to believe that there should be any overlap between employees of different firms. In this instance, Ms. Zeiss was not informed by anyone internal to Labaton, nor anyone from the Thornton or Lieff firms, that there was the potential for attorney time to be reported on more than one fee declaration.

Accordingly, she did not compare the various lodestar reports to each other.

INTERROGATORY 57:

Identify and describe all communication the Firm had with the Plaintiffs' Law Firms and/or ERISA counsel relating to the Firm's preparation of the Fee Petition, including but not limited to preparation of the Lodestar calculation, the inclusion of Staff Attorneys for whom Thornton had paid costs, calculation of a Lodestar multiplier, and reasonableness of attorneys' fees.

RESPONSE TO INTERROGATORY 57:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: The firm incorporates by reference its answer to Interrogatory No. 54 above. The Firm does not recall any communications with other counsel in connection with preparation of the Fee Petition concerning the specifics of calculating the lodestar or the lodestar multiplier. No one at the Firm has any recollection of receiving any communication from the Thornton firm concerning its intention to include the shared Staff Attorney time in its fee declaration. The calculations are straightforward and a function of the final lodestar numbers and fee request. The final numbers were not known until September 14, 2016, the day before the Fee Petition was filed. Multiple drafts of the fee brief, which included a section discussing the lodestar cross-check, were circulated among the Plaintiffs' Law Firms and ERISA counsel.

The Firm does not recall any communications with other counsel in connection with the preparation of the Fee Petition concerning the reasonableness of the attorneys' fees. Prior to the preparation of the Fee Petition, within the context of discussing the percentage fee that would be requested at the time of approval of the Settlement and reported in the "Notice of Pendency of Class Actions, Proposed Class Settlement, Settlement Hearing, Plan of Allocation, and any Motion for Attorneys' Fees, Litigation Expenses, and Service Awards" (the "Notice"), there were discussions concerning the overall reasonableness of a 25% attorneys' fee in the SST Litigation.

Answering further, pursuant to Fed. R. Civ. P. 33(d), the Firm references its production in response to Special Master Honorable Gerald E. Rosen's (Ret.) First Request for the Production of Documents, Request Nos. 42, 45.

INTERROGATORY 58:

Identify all individuals at the Firm who reviewed, assisted or contributed to the preparation and submission of Thornton's Fee Petition and describe the nature of their contributions.

RESPONSE TO INTERROGATORY 58:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: The firm incorporates by reference its answer to Interrogatory No. 54. Ms. Zeiss was the principle person that reviewed the Thornton Fee Petition, with some limited review done by Mr. Goldsmith and Mr. Rogers. The collective Fee Petition, including the Thornton Fee Petition, was physically filed using the Court's CM/ECF system by a paralegal at Labaton.

INTERROGATORY 60:

Identify all billing entries, costs and/or expenses incurred by the Firm during the SST Litigation that the Firm did not include in its Fee Petition/Lodestar calculation, and the reasons therefor.

RESPONSE TO INTERROGATORY 60:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states that it is its normal practice to reduce or eliminate certain expenses, including charges for airfare, meals, and related items. Similarly, the Firm in normal practice routinely excludes certain billed time in a fee petition, such as when less than five hours of work was performed, when the work performed was by a very junior employee, and when the work may have related to another litigation.

In this case, the following costs/expenses were not included in the Firm's Fee Petition:

Cost/Expense	Total Amount	Reason
In-House Catering	$245.00	Practice of Not Requesting
CD Duplication	$100.00	Minimal
Local Working Meals	$2,130.45	Expenses were removed or reduced either because: (1) charge related to a regular team meeting lunch; (2) charge was above Labaton's cap for out-of-office working meals; or (3) charge related to another case.
Airfare	$4,895.35	Expenses were removed or reduced either because: (1) first-class airfare was reduced to economy; (2) charge related to another case; or (3) charge incurred by Garrett Bradley as of counsel to Labaton and was written-off to avoid potential duplication.
Local and Overtime Transportation	$1,172.03	Expenses were removed because: (1) charge related to another case; or (2) charge incurred by Garrett Bradley as of counsel to Labaton and was written-off to avoid potential duplication.
Hotel	$3,148.05	Expenses were removed because they related to another case
Out-of-Town Working Meals	$349.70	Expenses were removed or reduced either because: (1) charge was above Labaton's cap for out-of-office working meals; (2) charge appeared to be more personal in nature than work-related; or (3) charge incurred by Garrett Bradley as of counsel to Labaton and was written-off to avoid potential duplication.
Miscellaneous Travel	$413.86	Expenses were removed because they appeared to be more personal in nature than work-related.
TOTAL	$12,454.44	

The following billing entries were not included in the Firm's Fee Petition, for one of several reasons: (1) the time-keeper had fewer than five hours or more than five hours but very minimal involvement in the case; (2) the time related to a different case; or (3) the time-keeper was a student. These entries total 196.8 hours and have a lodestar value of $97,502.50.

Timekeeper Name	Status	Date	Hours	Narrative
Moy, Edward	RA	11/04/2009	2.5	State Street analysis , SWIP analysis
Moy, Edward	RA	11/12/2009	0.5	State Street Ontario Teacher Plan analysis
Green, Jordan	PL	11/13/2009	2.7	Met with Javier Bleichmar and Stephanie Sundel; Research financial statements.
Cooper, Stuart H.	I	11/16/2009	1.5	Office conference; review amended complaint.
Green, Jordan	PL	11/16/2009	5.4	Research financial.
Cooper, Stuart H.	I	11/17/2009	1.0	Review amended complaint and notes.
Green, Jordan	PL	11/17/2009	3.3	Research financials and custodian agreements.
Moy, Edward	RA	11/17/2009	2.0	Analysis of OMERS state street for D. Auld
Chan, Victor	RA	01/21/2010	1.0	Loss Analysis.
Chan, Victor	RA	02/02/2010	1.0	Analyzed data received from FSKAG and estimated recognized losses and payments.
Avan, Rachel A.	OC	05/11/2010	4.8	Reviewed securities lending agreement cases. Westlaw research for Arkansas law re standards and trends for fiduciary duties; negligence; and breach of contract; worked on same with SJS
Dolgoff, Mindy S.	A	09/15/2010	0.1	Attorney meeting to discuss status of investigation and possible allegations
Goldman, Mark	OC	09/15/2010	0.1	Meetings of Counsel - Attorney meeting to discuss status of investigation and possible allegations
Nguyen, Angelina	OC	09/15/2010	0.1	Attorney meeting to discuss status of investigation and possible allegations.
Smith, Phillip	A	09/15/2010	0.1	Attorney meeting to discuss status of investigation and possible allegations.
Dolgoff, Mindy S.	A	09/22/2010	0.1	Attorney meeting to discuss legal theories and status of investigation
Nguyen, Angelina	OC	09/22/2010	0.1	Attorney meeting to discuss legal theories and status of investigation
Smith, Phillip	A	09/22/2010	0.1	Attorney meeting to discuss legal theories and status of investigation.
Goldman, Mark	OC	09/23/2010	0.1	Meetings of Counsel - Attorney meeting to discuss legal theories and status of investigation
Gardner, Jonathan	P	09/24/2010	0.9	Research for Mellon Bank claims; conversation with P. Scarlato.
Gardner, Jonathan	P	09/27/2010	1.1	Confer with P. Scarlato and C. Martin re: Mellon Bank claims for PA.
Gardner, Jonathan	P	09/28/2010	1.1	Attend to research for claims against Mellon Bank; confer with C. Martin and P. Scarlato.
Nguyen, Angelina	OC	09/28/2010	0.2	Attorney meeting to discuss foreign exchange fees and possible legal theories.
Smith, Phillip	A	09/28/2010	0.2	Attorney meeting to discuss foreign exchange fees and possible legal theories.

Timekeeper Name	Status	Date	Hours	Narrative
Villegas, Carol C.	P	09/28/2010	0.2	Attorney meeting to discuss foreign exchange
Gardner, Jonathan	P	09/29/2010	1.1	Attend to research for claims against Mellon
Gardner, Jonathan	P	09/30/2010	1.2	Prepare memo on claims against Mellon Bank.
Gardner, Jonathan	P	10/01/2010	1.6	Prepare memo on BNY; correspond with
Gardner, Jonathan	P	10/04/2010	1.1	Research SOL for claims against BNY Mellon.
Goldman, Mark	OC	10/06/2010	0.2	Meetings of Counsel - Attorney meeting to
Nguyen, Angelina	OC	10/06/2010	0.2	Attorney meeting to discuss complaint, legal
Smith, Phillip	A	10/06/2010	0.2	Attorney meeting to discuss complaint, legal
Villegas, Carol C.	P	10/06/2010	0.2	Attorney meeting to discuss complaint, legal
Gardner, Jonathan	P	10/12/2010	1.5	Prepare memo on tolling for statute of limitations
Goldman, Mark	OC	10/12/2010	0.1	Meetings of Counsel - Attorney meeting to
Nguyen, Angelina	OC	10/12/2010	0.1	Attorney meeting to discuss legal theories
Smith, Phillip	A	10/12/2010	0.1	Attorney meeting to discuss legal theories.
Villegas, Carol C.	P	10/12/2010	0.1	Attorney meeting to discuss legal theories.
Goldman, Mark	OC	11/08/2010	0.1	Meetings of Counsel - Attorney meeting to discuss status of client search and complaint
Hallowell, Serena	P	11/08/2010	0.1	Attorney meeting to discuss status of client search and complaint.
Nguyen, Angelina	OC	11/08/2010	0.1	Attorney meeting to discuss status of client search and complaint.
Smith, Phillip	A	11/08/2010	0.1	Attorney meeting to discuss status of client search and complaint.
Villegas, Carol C.	P	11/08/2010	0.1	Attorney meeting to discuss status of client search and complaint.
Penn-Taylor, Margo	PL	11/10/2010	0.1	Copy memos from firm system for Amy Greenbaum.
Penn-Taylor, Margo	PL	11/12/2010	2.0	Worked on preparing binders for Amy Greenbaum.
Goldman, Mark	OC	11/18/2010	0.2	Meetings of Counsel - Attorney meeting to discuss status of investigation, possible clients and qui tam actions
Hallowell, Serena	P	11/18/2010	0.2	Attorney meeting to discuss status of investigation, possible clients and qui tam actions.
Nguyen, Angelina	OC	11/18/2010	0.2	Attorney meeting to discuss status of investigation, possible clients and qui tam actions
Penny, Brian D	OC	11/18/2010	0.2	Meetings of Counsel - Attorney meeting to discuss status of investigation, possible clients and qui tam actions

Timekeeper Name	Status	Date	Hours	Narrative
Smith, Phillip	A	11/18/2010	0.2	Attorney meeting to discuss status of investigation, possible clients and qui tam actions.
Villegas, Carol C.	P	11/18/2010	0.2	Attorney meeting to discuss status of investigation, possible clients and qui tam
Hallowell, Serena	P	40511	2.0	Meeting regarding case; research regarding qui tam actions
Goldman, Mark	OC	11/30/2010	0.1	Meetings of Counsel - Attorney meeting to discuss clients, status of investigation and qui tam issues
Goto, Yoko	A	11/30/2010	0.1	Lit Group weekly meeting.
Hallowell, Serena	P	11/30/2010	6.5	Research regarding qui tam actions and relators and memo regarding relators and editing of same and email regarding same; meeting regarding state street and qui tam
Hallowell, Serena	P	11/30/2010	0.1	Attorney meeting to discuss clients, status of investigation, and qui tam issues.
Nguyen, Angelina	OC	11/30/2010	0.1	Attorney meeting to discuss clients, status of investigation, and qui tam issues
Penny, Brian D	OC	11/30/2010	0.1	Meetings of Counsel - Attorney meeting to discuss clients, status of investigation and qui tam issues
Smith, Phillip	A	11/30/2010	0.1	Attorney meeting to discuss clients, status of investigation, and qui tam issues.
Villegas, Carol C.	P	11/30/2010	0.1	Attorney meeting to discuss clients, status of investigation, and qui tam issues.
Dolgoff, Mindy S.	A	12/14/2010	0.2	Attorney meeting to discuss legal theories and status of investigation
Goldman, Mark	OC	12/14/2010	0.2	Meetings of Counsel - Attorney meeting to discuss legal theories and status of investigation
Nguyen, Angelina	OC	12/14/2010	0.2	Attorney meeting to discuss legal theories and status of investigation.
Penny, Brian D	OC	12/14/2010	0.2	Meetings of Counsel - Attorney meeting to discuss legal theories and status of investigation
Smith, Phillip	A	12/14/2010	0.2	Attorney meeting to discuss legal theories and status of investigation.
Villegas, Carol C.	P	12/14/2010	0.2	Attorney meeting to discuss legal theories and status of investigation.
Dolgoff, Mindy S.	A	01/05/2011	0.2	Attorney meeting to discuss status of investigation and complaint
Goldman, Mark	OC	01/05/2011	0.2	Meetings of Counsel - Attorney meeting to discuss investigation and complaint
Nguyen, Angelina	OC	01/05/2011	0.2	Attorney meeting to discuss status of investigation and complaint.
Dolgoff, Mindy S.	A	01/25/2011	0.1	Attorney meeting to discuss the Mellon Bank qui tam case and client issues

Timekeeper Name	Status	Date	Hours	Narrative
Evans, Iona M.	A	01/25/2011	0.1	Attorney meeting to discuss the Mellon Bank qui tam case and client issues.
Gardner, Jonathan	P	01/25/2011	0.1	Attorney meeting to discuss the Mellon Bank qui tam case and client issues.
Goldman, Mark	OC	01/25/2011	0.1	Meetings of Counsel - Attorney meeting to discuss Mellon Bank qui tam case and client issues
Greenbaum, Amy N.	I	01/25/2011	0.1	Attorney meeting to discuss the Mellon Bank qui tam case and client issues.
Hector, Nicholas R.	A	01/25/2011	0.1	Attorney meeting to discuss the Mellon Bank qui tam case and client issues.
Malonzo, Francisco R.	PL	01/25/2011	0.1	Attorney meeting to discuss the Mellon Bank qui tam case and client issues.
Nguyen, Angelina	OC	01/25/2011	0.1	Attorney meeting to discuss the Mellon Bank qui tam case and client issues.
Scarlato, Paul	OC	01/25/2011	0.1	Meetings of Counsel - Attorney meeting to discuss Mellon Bank qui tam case and client issues
Smith, Phillip	A	01/25/2011	0.1	Attorney meeting to discuss the Mellon Bank qui tam case and client issues.
Villegas, Carol C.	P	01/25/2011	0.1	Attorney meeting to discuss the Mellon Bank qui tam case and client issues.
Fonti, Joseph	P	02/01/2011	1.8	Conference regarding case strategy. Review memo to client and draft complaint.
Fonti, Joseph	P	02/03/2011	4.5	Strategy meeting regarding GMP with J. Gardner and P. Scarlato. Conference regarding RFP process. Further analysis.
Fonti, Joseph	P	02/04/2011	4.8	Further analysis of claims. Correspondence with team and co-counsel. Strategy on filing CMP.
Fonti, Joseph	P	02/05/2011	1.8	Correspondence. Review/revise complaint. Provide draft to team.
Moehlman, Mathew C.	A	02/05/2011	3.5	Research unjust enrichment law in Mass.; draft count for complaint for same.
Fonti, Joseph	P	02/06/2011	1.5	Correspondence regarding complaint and strategy.
Fonti, Joseph	P	02/07/2011	1.8	Correspondence regarding complaint substance/strategy.
Stocker, Michael W.	P	02/07/2011	2.3	Legal research regarding claims.
Stocker, Michael W.	P	02/07/2011	0.8	Review and edit 23(g) motion. Also did additional research.
Fonti, Joseph	P	02/08/2011	0.8	Correspondence regarding filing complaint.
Moehlman, Mathew C.	A	02/08/2011	2.1	Research re verified complaint; discuss same w/ J. Gardner.
Fonti, Joseph	P	02/10/2011	1.0	Correspondence regarding transition to Joel. Correspondence regarding CMP.
Cordoba-Riera, Diana M.	PL	03/18/2011	1.0	Assist with filing procedures; draft documentation regarding rules for filing in the D. MA.

Timekeeper Name	Status	Date	Hours	Narrative
Stocker, Michael W.	P	03/22/2011	0.4	Interim lead papers review.
McDonald, Christopher J.	P	03/24/2011	0.2	Conference with Eric Belfi. Reviewing complaint and background materials.
Cordoba-Riera, Diana M.	PL	03/25/2011	0.7	Research procedures on pro hac vice admission in the D. MA.
Stocker, Michael W.	P	03/30/2011	2.5	Meeting with client and Eric Belfi. Prepare for client meeting.
Avan, Rachel A.	OC	04/01/2011	0.9	Prepared fee agreement; worked on same with Christopher J. Keller.
Avan, Rachel A.	OC	04/05/2011	0.3	Revised letter agreement with Christopher J. Keller's comments.
Avan, Rachel A.	OC	04/07/2011	0.4	Worked on letter agreement with Christopher J. Keller; revised same.
Cordoba-Riera, Diana M.	PL	04/22/2011	0.6	Follow-up with the clerk at D. MA regarding Pro Hac Vice Status.
Alex, Martis	P	04/29/2011	0.8	Meeting re: litigation status
Wattenberg, Steven	PL	05/26/2011	0.5	Research and register Paul Scarlato, Mike Rogers and Joel Bernstein for ECF in USDC - Massachusetts.
Giles, Matthew	RA	06/03/2011	0.5	Read through complaint and related documents.
Appenfeller, Mathew	LC	06/08/2011	2.0	Pulling pertinent cases from case and defendant's Motion to Dismiss.
Bliss, Jean H.	PL	06/08/2011	2.0	Pulling and indexing 93 cases cited in Defendants' Memo in Support of their Motion to Dismiss. Printed, bindered and saved to shared drive as well.
Zhang, Kan	LC	06/08/2011	3.6	Research complaint and motion to dismiss. Meeting with Mike Rogers.
Appenfeller, Mathew	LC	06/09/2011	7.0	Briefing analysis and researching issues presented in cases mentional above.
Bliss, Jean H.	PL	06/09/2011	3.0	Pulling and indexing 93 cases cited in Defendants' Memo in Support of their Motion to Dismiss. Printed, bindered and saved to shared drive as well.
Zhang, Kan	LC	06/09/2011	3.0	Research on Nullum Tempus.
Appenfeller, Mathew	LC	06/10/2011	2.0	Researching details of Breach of Contract argument in defendant's Motion to Dismiss.
Appenfeller, Mathew	LC	06/15/2011	6.0	Breach of contract research on State Street.
Appenfeller, Mathew	LC	06/16/2011	4.0	Breach of Contract research for State Street.
Appenfeller, Mathew	LC	06/21/2011	4.0	Breach of Contract research for State Street.
Appenfeller, Mathew	LC	06/22/2011	5.0	Breach of Contract research for State Street.
Appenfeller, Mathew	LC	06/30/2011	2.0	Research on 'ambiguity held against the drafter' law in Arkansas.Salvage of GoLive Time
Giles, Matthew	RA	06/30/2011	1.5	Read through and re-formatted client documents on the shared drive.Salvage of GoLive Time

Timekeeper Name	Status	Date	Hours	Narrative
Wattenberg, Steven	PL	07/11/2011	0.4	Research J. Bernstein ECF login info for USDC-MASS and to arrange to obtain new one.Salvage of GoLive Time
Alex, Martis	P	07/12/2011	0.5	Litigation stratgey meeting
Appenfeller, Mathew	LC	07/12/2011	4.0	Research on custodial contracts that discuss fee schedule mergers.
Appenfeller, Mathew	LC	07/12/2011	3.0	Research on AR courts definition of "free of charge."
Salzman, Hollis L.	P	07/13/2011	0.1	Analyze litigation control issues
Appenfeller, Mathew	LC	07/14/2011	3.0	Research on overlapping class action claims in CA.
Fonti, Joseph	P	07/14/2011	0.3	Prep and attend lit control discussion.Salvage of GoLive Time
Wattenberg, Steven	PL	08/08/2011	0.2	Research proper category to file a Notice of Supplemental Authority under in the USDC-MASS.
Muchmore, Edward	I	10/13/2011	3.3	Review complaint.
Alexander, Jeffrey R.	A	12/02/2011	5.5	Research and prepare documents for application for special master.
Joyner, Rodney	PL	12/16/2011	1.0	State Street (Maryland Erisa) - Searched and Pulled dockets from PACER (050) 1hrs
Good, Katie	PL	01/23/2012	0.5	Review case docket and pull recent filings for BNY (SEPTA).
Good, Katie	PL	01/23/2012	0.3	Review case docket and pull recent filings for BNY (SEPTA).
Good, Katie	PL	01/24/2012	0.7	Review case docket and pull recent filings for BNY (SEPTA).
Evans, Iona M.	A	04/17/2012	2.4	Meeting re depositions.
Good, Katie	PL	08/17/2012	1.0	Pull documents from docket and save to shared drive.
Fernando, Terrence D.	SA	12/20/2012	2.3	Reviewed documents to be produced to defendants in order to identify those that are privileged.
Kosa, John	SA	12/20/2012	3.0	Reviewed documents in the non consecutive Bates range SST-ARTRS 0008420 to SSR-ARTRS 0012744 to search for relevant names mentioned in documents.
Tzall, Robert	SA	12/20/2012	6.0	Investigation Selected guided searches of potentially privilege documents to insure privledged documents would to be released to Plaintiffs
Kosa, John	SA	12/21/2012	1.0	Reviewed documents to search for relevant names mentioned in documents.
Murro, Daniel	SA	02/01/2013	1.0	Investigation Conference call and Catalyst Insight document review software training.
Einstein, Joseph H.	OC	03/06/2013	0.7	Review Precision Agreement and correspondence.

Timekeeper Name	Status	Date	Hours	Narrative
Bleichmar, Javier	P	04/12/2013	0.1	Litigation Strategy and Analysis.
Fonti, Joseph	P	04/12/2013	0.1	Update and strategy discussion.
Chan, Victor	RA	01/03/2014	4.5	Researched whether monitored clients with custodian bank State Street traded foreign exchange currencies, the time of each trade, and highlighted transactions that are within 5 minutes of the hour or at the 4PM London time.
Bradley, Garrett	OC	05/14/2015	0.1	Reviewing settlement outline.
Bradley, Garrett	OC	05/26/2015	0.1	Reviewing mediation strategies.
Dubbin, Jeffrey	A	06/17/2015	1.0	Researched CAFA notice and settlement schedule; conference with Lou Gottlieb re: the same. Prepared settlement schedule proposal.
Dubbs, Thomas A.	P	06/17/2015	1.9	Conference C. Keller; conference L. Gottlieb regarding CAFA issues; work on CAFA memo.
Dubbs, Thomas A.	P	06/18/2015	2.2	Work on CAFA memo.
Potts, Marissa	LC	06/18/2015	3.5	Researched to determine when the 90 day waiting period begins for CAFA
Goldsmith, David J.	P	10/13/2015	2.8	Review settlement approval and fee briefs in BNY Mellon settlement; strategy for fee request
Tse, Victoria	RA	10/20/2015	0.5	Account listing for all State Street state clients
Tse, Victoria	RA	10/23/2015	2.0	Custodial checking all accounts for State Street Clients for custodial emails
Bradley, Garrett	OC	05/03/2016	1.0	Review Documents re State Street.
Bradley, Garrett	OC	05/24/2016	2.0	State Street.
Arisohn, Mark S.	P	06/27/2016	0.1	Attend team meeting re: litigation strategy.
Crevier, Jonathan	LC	06/27/2016	0.1	Attend team meeting re: litigation strategy.
Hrutkay, Matthew	A	06/27/2016	0.1	Attend team meeting re: litigation strategy.
Okun, Barry	OC	06/27/2016	0.1	Attend team meeting re: litigation strategy.
TOTALS			**196.8**	**$97,502.50**

In the "status" column of this chart, "P" represents a partner, "OC" represents of counsel, "A" represents associate, "RA" represents research analyst, "I" represents investigator, "PL" represents paralegal, and "LC" represents law clerk.

INTERROGATORY 61:

Explain the significance of the statement made in Paragraph 7 of Exhibit A to the *Declaration of Lawrence A. Sucharow* (Docket #104-15), affirming that the hourly rates included in Exhibit A are the Firm's "regular rates charged for their services, which have been accepted in other complex class actions." Please describe any other instances in which the Firm has submitted a Fee Petition with the same or similar language.

RESPONSE TO INTERROGATORY 61:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: It is typical in class action fee declarations to include a statement characterizing the billing rates reported. Different firms use different statements, as evidenced by the individual fee and expense declarations submitted with the Fee Petition (ECF No. 104-15 to 104-23). The intent of the statement used by Labaton, as set forth above, was to convey to the Court that the rates in Exhibit A are the firm's regular standard rates, which were not applied for a specific case or depending on the nature of the type of work performed, and that other Courts had found them reasonable when charged to a class in other litigation. Moreover, as reflected in the Firm's responses to Interrogatory 45 above, the rates are the standard billing rates in the uncommon circumstance when the Firm has hourly clients who pay by invoice. (Please see the Firm's answer to Interrogatory No. 71 for additional information.)

Labaton submitted fee petitions with similar language in at least 10 other cases (see below). The phrase "complex class actions" was used in the Firm's Fee Petition in the SST Litigation, rather than the "securities or shareholder litigations" used below, because the Class Actions were not securities or shareholder litigations.

Case	Language from Labaton's Individual Fee and Expense Declaration	Dated Filed
In re Amgen Inc. Sec. Litig., No. 07-cv-2536 (C.D. Cal.)	"The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other securities or shareholder litigations." (ECF No. 591-5)	9/20/2016
Van Noppen v. *InnerWorkings, Inc.*, No. 14-cv-01416 (N.D. Ill.)	"The hourly rates for the attorneys and professional support staff of my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other securities or shareholder litigations." (ECF No. 100-4)	9/6/2016
In re Nu Skin Enterprises, Inc. Sec. Litig., No. 14-cv-00033 (D. Utah)	"The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other securities or shareholder litigations." (ECF No. 140-4)	8/31/2016
In re: Spectrum Pharmaceuticals, Inc., Sec. Litig., No. 13-cv-00433 (D. Nev.)	"The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other securities or shareholder litigations." (ECF No. 152-4)	5/9/2016
In re Neustar, Inc. Sec. Litig., No. 14-cv-00885 (E.D. Va.)	"The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other securities or shareholder litigations." (ECF No. 60-5)	10/29/2015
Freedman v. Weatherford Int'l, Ltd., No. 12-cv-2121 (S.D.N.Y.)	"The hourly rates for the attorneys and professional support staff of my firm included in Exhibit A are my firm's usual and customary billing rates, and are consistent with the rates accepted in other securities or shareholder litigations." (ECF No. 202-6)	9/29/2015

Case	Language from Labaton's Individual Fee and Expense Declaration	Dated Filed
In re ViroPharma Inc. Sec. Litig., No. 12-2714 (E.D. Pa.)	"The hourly rates for the attorneys and professional support staff of my firm included in Exhibit B are my firm's usual and customary billing rates, which have been accepted in other securities or shareholder litigations." (ECF No. 91-6)	9/25/2015
In re Celestica Inc. Sec. Litig., No. 07-cv-00312 (S.D.N.Y.)	"The hourly rates for the attorneys and professional support staff of my firm included in Exhibit B are my firm's usual and customary billing rates, which have been accepted in other securities or shareholder litigations." (ECF No. 262-1)	6/23/2015
In re Colonial BancGroup, Inc. Sec. Litig., No. 09-cv-00104 (M.D. Ala.)	"The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as the regular rates charged for their services and have been accepted in other securities or shareholder litigation." (ECF No. 557-7)	5/14/2015
In re Fannie Mae 2008 Sec. Litig., No. 08-cv-7831 (S.D.N.Y.)	"The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as the regular rates charged for their services in other securities or shareholder litigations." (ECF No. 539-9)	1/16/2015

INTERROGATORY 62:

Do you contend that the rates listed in the Firm's Fee Petition represent the prevailing rates in the community for similar services performed by lawyers of reasonably comparable skill, experience and reputation for each of the respective tasks performed? Why or why not?

RESPONSE TO INTERROGATORY 62:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: Yes, the Firm does contend that the rates listed in the Firm's Fee Petition represent the prevailing rates in the community for similar services performed by lawyers of reasonably comparable skill, experience and reputation for each of the respective tasks performed. As explained in the Fee Petition, Plaintiffs'

Counsel's hourly billing rates in the SST Litigation ranged from $350 to $1,000 for Partners[1], $455 to $1,000 for Of Counsel, and $325 to $725 for other attorneys. (*See* ECF 104 at ¶177.) As explained in response to Interrogatory No. 44, the Firm does an annual review of fee petitions submitted in bankruptcy court filings nationwide by law firms that specialize in complex commercial litigation, as Labaton Sucharow and the other Plaintiffs' Counsel do. The 2015 data set, summarized in Ex. 25 to the Fee Petition and the most recent available at the time of the Fee Petition, showed that these defense-side firms' billing rates were either comparable to the rates of Plaintiffs' Counsel or exceed Plaintiffs' Counsel's rates.

INTERROGATORY 64:

Describe when and how the Law Firm first learned about the Boston Globe's inquiry into the Fee Award, and underlying billing practices employed by the Firm and other counsel in the SST Litigation, that preceded the publication of the December 17, 2016 Article.

RESPONSE TO INTERROGATORY 64:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: The Firm first learned about the *Boston Globe*'s inquiry into the Fee Award, and underlying billing practices employed by the Firm and other counsel in the SST Litigation, that preceded the publication of the December 17, 2016 Article, on November 8, 2016. On that date, Garrett Bradley of Thornton called David Goldsmith of Labaton Sucharow and advised him that he had received a telephone call earlier that day from a reporter at the *Boston Globe* concerning the Fee Petition. Also on that date, Garrett Bradley and Evan Hoffman of Thornton called Nicole Zeiss of Labaton Sucharow separately and advised her that a journalist had made inquiries concerning Staff Attorney time reported in the Fee Petition.

[1] Elizabeth Cabraser, Richard Heimann, and Robert Lieff of the Lieff Cabraser firm were the only attorneys with rates of $1,000 per hour.

INTERROGATORY 65:

Describe when and how the Law Firm first identified duplicative billing entries reflected in the Firm's Fee Petition and describe all actions taken by the Firm to review, confirm and/or correct those errors.

RESPONSE TO INTERROGATORY 65:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: The Firm first identified duplicative billing entries reflected in the Firm's Fee Petition on November 8, 2016, after the telephone communications from Garrett Bradley and Evan Hoffman of Thornton described in the Answers and Objections to Interrogatory No. 64 above. Promptly after these telephone calls, David Goldsmith, Howard Goldberg, and Nicole Zeiss compared the Labaton Sucharow and Thornton lodestar reports, and recognized for the first time that certain Staff Attorneys who appeared on both lodestar reports were listed as having worked precisely the same number of hours. Mr. Goldsmith and Ms. Zeiss promptly spoke with Michael Lesser and Evan Hoffman of Thornton and received information from the Thornton Firm. Mr. Goldsmith also notified Joel Bernstein, a senior partner of the Firm and then a member of the Executive Committee, Michael Stocker, a partner who serves as the Firm's General Counsel, and Michael Rogers, a partner of the Firm who worked on the action. (Lawrence Sucharow, Chairman of the Firm, could not be notified in person because he was on vacation overseas; he returned to work on November 14 and was promptly briefed.)

Mr. Goldsmith and Ms. Zeiss also notified internal personnel involved in the SST Document Review, Staff Attorney hiring and coordination, accounting, and litigation coordination, and convened one or more in-person meetings to discuss the issue. Finally, Mr. Goldsmith spoke with Daniel Chiplock of Lieff Cabraser while he was out of town on unrelated

business. Mr. Goldsmith alerted Mr. Chiplock to the issue and asked him to perform a detailed review of the Thornton and Lieff Cabraser lodestar reports, even if only as a due diligence measure. The Firm's investigation and communications with Thornton and Lieff Cabraser, and later with ERISA Counsel, culminated in the disclosures set forth in the November 10, 2016 Letter filed with the Court.

INTERROGATORY 66:

Describe in detail how the Law Firm drafted the November 10, 2016 Letter, including the full names of all individuals who contributed to the Letter, the nature of any internal review by the Firm, and all individuals outside the firm who reviewed and/or contributed to the Letter and the nature of their contribution(s).

RESPONSE TO INTERROGATORY 66:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: The November 10, 2016 Letter was drafted by David Goldsmith of Labaton Sucharow on November 8-10, 2016. Mr. Goldsmith shared the initial draft with Nicole Zeiss of Labaton Sucharow on November 8, 2016. Drafts were then shared internally beginning on November 9, 2016 with Ms. Zeiss and Labaton Sucharow partners Joel Bernstein, Michael Stocker, and Eric Belfi (the relationship partner for ARTRS and a member of the Firm's Executive Committee), then Daniel Chiplock of Lieff Cabraser, then Garrett Bradley and Evan Hoffman of Thornton, with responsive markups shared with Mr. Stocker and Mr. Chiplock. Further drafts were circulated internally to the Firm's Executive Committee, and finally with Keller Rohrback, Zuckerman Spaeder, and McTigue Law (*i.e.*, ERISA Counsel) together with Thornton and Lieff Cabraser. Additional drafts circulated among this full counsel group, with certain drafts also circulated internally to the Executive Committee or certain members thereof. The effective working group ultimately narrowed on

November 10, 2016 to Mr. Goldsmith, Michael Lesser of Thornton, Mr. Chiplock, and Carl Kravitz of Zuckerman Spaeder, leading to final signoff and submission of the Letter to the Court.

Individuals who contributed to the Letter, listed alphabetically (the Firm interprets "contributed" to exclude individuals who generally approved the Letter but did not provide edits or comments):

Garrett Bradley; Daniel Chiplock; Howard Goldberg (Labaton Sucharow Litigation Coordinator, who assembled relevant data); David Goldsmith; James Johnson (partner at Labaton Sucharow and member of the Executive Committee); Christopher Keller (same); Carl Kravitz; Michael Lesser; Brian McTigue (McTigue Law); Nicole Zeiss.

Individuals outside the Firm who reviewed and/or contributed to the Letter, listed alphabetically (the Firm interprets "reviewed" here to include each individual who appears to have received at least one draft of the Letter, regardless of whether he or she actually reviewed the draft(s)):

Jonathan Axelrod (Beins Axelrod); Garrett Bradley; Daniel Chiplock; Brooke Edwards (McTigue Law); Evan Hoffman; Carl Kravitz; Michael Lesser; Robert Lieff (Lieff Cabraser); Regina Markey (McTigue Law); Brian McTigue; James Moore (McTigue Law); Lynn Sarko (Keller Rohrback).

Nature of internal review by the Firm, i.e., *partners of the Firm who received drafts of the Letter, listed alphabetically:*

Martis Alex (then a member of the Executive Committee); Eric Belfi; Joel Bernstein; Thomas Dubbs (member of the Executive Committee); David Goldsmith; James Johnson; Christopher Keller; Edward Labaton (former member of the Executive Committee); Michael Stocker; Lawrence Sucharow; Nicole Zeiss.

INTERROGATORY 67:

Identify and describe all documents relied upon by the Law Firm in drafting the November 10, 2016 Letter.

RESPONSE TO INTERROGATORY 67:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: David Goldsmith of Labaton Sucharow relied upon the following documents and categories of documents in drafting the November 10, 2016 Letter:

(a) [Proposed] Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs, ECF No. 103-1.

(b) Labaton Sucharow Lodestar Report, ECF No. 104-15, at 7-9.

(c) Thornton Lodestar Report, ECF No. 104-16, at 7-8.

(d) Lieff Cabraser Lodestar Report, ECF No. 104-17, at 8-9.

(e) Keller Rohrback Lodestar Report, ECF No. 104-18, at 6-7.

(f) McTigue Law Lodestar Report, ECF No. 104-19, at 11.

(g) Zuckerman Spaeder Lodestar Report, ECF No. 104-20, at 7.

(h) Feinberg Campbell Lodestar Report, ECF No. 104-21, at 6.

(i) Beins Axelrod Lodestar Report, ECF No. 104-22, at 8.

(j) Richardson Patrick Lodestar Report, ECF No. 104-23, at 6.

(k) Master Chart, ECF No. 104-24.

(l) Order Awarding Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs, ECF No. 111.

(m) November 2, 2016 Hearing Transcript.

(n) Excel file titled "State Street Doc Review Time by date," showing number of hours billed on a daily basis by Staff Attorneys common to Labaton Sucharow and Thornton, prepared internally by Howard Goldberg (Labaton Sucharow Litigation Coordinator) on November 8, 2016.

(o) Excel file titled "Labaton/Thornton Hour Comparison," showing rates, hours and billings by Staff Attorneys common to Labaton Sucharow and Thornton, prepared internally by Howard Goldberg on November 8, 2016.

(p) E-mail dated November 9, 2016 from Daniel Chiplock (Lieff Cabraser) to David Goldsmith, copying Evan Hoffman and Michael Lesser (both of Thornton), concerning discrepancies between Lieff Cabraser and Thornton Lodestar Reports.

(q) Various markups of draft Letter, received on November 9 and 10, 2016 internally from Nicole Zeiss and James Johnson and from Michael Lesser, Daniel Chiplock, Carl Kravitz (Zuckerman Spaeder), and Brian McTigue (McTigue Law).

(r) Various e-mails concerning subject matter and language of the Letter, received on November 9 and 10, 2016 internally from Christopher Keller and others and from Michael Lesser, Daniel Chiplock, and Carl Kravitz.

INTERROGATORY 70:

Identify, in detail, any additional errors in your any communication with the Court or with the Special Master, since filing of the Fee Petition(s) and explain each step or action taken to correct each error, including all documents or information consulted or relied upon in making the correction(s).

RESPONSE TO INTERROGATORY 70:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm has no further response to this Interrogatory.

INTERROGATORY 71:

Identify and explain any mistakes you have identified in the Fee Petition, Motion for Attorneys' Fees, and/or Fee Award, not described above.

RESPONSE TO INTERROGATORY 71:

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm responds that, although it does not consider it to have been a "mistake," the Firm is now aware that some have interpreted Paragraph 7 of the Declaration of Lawrence A. Sucharow on Behalf of Labaton Sucharow LLP in Support of Lead

Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses (ECF No. 104-15) in a manner other than as intended. That sentence, a version of which appears in declarations submitted by other Plaintiffs' firms and has appeared in Labaton Sucharow's fee petitions for several years, says:

> The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other complex class actions.

Labaton Sucharow now understands that some interpreted that sentence to mean that the Firm's rates submitted with the referenced declaration are billed to clients that pay for the Firm's services on an hourly basis. In fact, although in limited circumstances the Firm has had hourly clients who were actually billed at the rates to which this language has made reference, the overwhelming majority of the Firm's clients retain Labaton Sucharow's services on a contingency basis. The language was intended to impart that the same annual rates are used in the lodestar reports for all fee petitions in the given year and are not project specific, nor do they apply only to specific cases or depend on the nature of the type of work performed. Given the apparent ambiguity, Labaton Sucharow now believes it would be preferable going forward to provide additional explanation so that the Court understands that the rates being used by Labaton Sucharow in connection with the lodestar check of the fee award, although fully supported, customary in the industry, and (as stated) accepted in other complex class actions, are used for all lodestar reports in a given year but are not typically billed to clients of the Firm inasmuch as clients do not typically pay an hourly rate.

In addition, during the course of responding to the Special Master's discovery requests, Nicole Zeiss identified two additional types of errors in the Firm's Fee Petition.

In preparing a response to Interrogatory No. 60 relating to fees and expenses not included in the final fee submission, and responding to other interrogatories, Ms. Zeiss consulted the

Firm's time records previously produced to the Special Master. While she was referring to the time records, she noticed several entries related to the Fee Petition, which ordinarily would have been removed from the Firm's lodestar report. She asked Howard Goldberg to create the report of the Firm's written-off time, reported above in the response to Interrogatory No. 60, and to create a report of the Firm's time entries potentially related to the Fee Petition, reported below. (This process also revealed an entry for Joel Bernstein on 4/25/16 that should have been removed because this was time spent by David Goldsmith.) Unfortunately, the time entries below were mistakenly included in the Firm's Fee Petition. These entries total 108.1 hours and have a lodestar value of $80,330.00. This time did not represent the entirety of the Firm's time spent preparing the Fee Petition, in that the lodestar reports have a cut-off date of August 30, 2016 and a significant amount of time was spent on the Fee Petition after August 30, 2016 – time that was not included in the Firm's Fee Petition.

Ordinarily, these types of entries would and should have been removed from the Firm's lodestar report prior to submission with a fee motion. In its ordinary practice, the Firm searches its time entries for the word "fee" in order to catch such entries, but that practice was either not performed here or was incomplete. Going forward, to ensure that such entries are indeed removed from fee applications, both Ms. Zeiss and Mr. Goldberg will each identify time entries related to the preparation of the fee motion at issue, by searching for entries related to "fee", "expenses, and "lodestar," and will confer about their removal. Before a lodestar report is finalized, Mr. Goldberg will prepare a report of all written-off time and Ms. Zeiss will confirm that the time has indeed been removed.

The following billing entries were mistakenly included in the Firm's Fee Petition:

Timekeeper Name	Status	Date	Hours	Narrative
Joel Bernstein	P	04/25/16	4.0	Review/markup Plan of Allocation; e-mails with Nicole Zeiss and co-counsel re same; e-mails with Nicole Zeiss and Mike Rogers re co-counsel expenses issues; review markup of Settlement Agreement and Nicole Zeiss comments; prepare for Tuesday call.
David Goldsmith	P	08/16/16	1.5	Research for fee and expense brief.
Roger Yamada	SA	08/16/16	1.5	Began preparing a table to add to the brief, or attach as an appendix, reporting class action settlements (consumer and securities) ranging from $200 M to $400 M as well as the awarded fee.
David Goldsmith	P	08/17/16	2.5	Research re fee brief issues
Nicole Zeiss	P	08/17/16	1.0	Dealt with fee issues.
Roger Yamada	SA	08/17/16	3.0	Narrowed westlaw results for "common fund" and "class action" in preparing a table to add to the brief, or attach as an appendix, reporting class action settlements (consumer and securities) ranging from $200 M to $400 M as well as the awarded fee.
Roger Yamada	SA	08/17/16	3.0	Began preparing a table to add to the brief, or attach as an appendix, reporting class action settlements (consumer and securities) ranging from $200 M to $400 M as well as the awarded fee.
David Goldsmith	P	08/19/16	2.5	Review research materials for fee brief
David Goldsmith	P	08/22/16	8.8	Research/draft fee brief
Roger Yamada	SA	08/22/16	1.0	Created a table reporting class action settlements (consumer and securities) ranging from $200 M to $400 M and the awarded fee, and began populating the table by running a common fund search on Westlaw.
David Goldsmith	P	08/23/16	14.0	Research/draft fee brief; e-mails with M. Miarmi and D. Chiplock; e-mails with Nicole Zeiss
David Goldsmith	P	08/24/16	10.2	Research/draft fee brief; e-mails with D. Chiplock; disc strategy with G. Bradley.
Roger Yamada	SA	08/24/16	3.0	Referenced Westlaw to obtain multiplier and fee information for Tyco, Raytheon, First Databank, Neurontin, Lupron, and CVS cases for David Goldsmith.
Roger Yamada	SA	08/24/16	3.0	Reviewed the $100+ million settlement cases and determined fee and multiplier information for the settlements table; discussed with David Goldsmith.
David Goldsmith	P	08/25/16	9.4	Research/draft fee brief; e-mails with Roger Yamada.

Timekeeper Name	Status	Date	Hours	Narrative
Roger Yamada	SA	08/25/16	3.0	Continued reviewing the $100+ million settlement cases and determined fee and multiplier information for the settlements table; discussed with David Goldsmith.
Roger Yamada	SA	08/25/16	2.0	Reviewed outlier cases encountered in the search for $100+ million settlement cases; discussed with Nicole Zeiss and included in the settlements chart.
David Goldsmith	P	08/26/16	9.9	Research/draft fee brief; review co-counsel draft settlement brief; e-mails re same
David Goldsmith	P	08/27/16	7.7	Research/draft fee brief
David Goldsmith	P	08/28/16	11.1	Research/draft fee brief; send draft to co-counsel and internally.
David Goldsmith	P	08/29/16	2.0	Revise fee brief per Larry Sucharow comments and recirculate
David Goldsmith	P	08/30/16	2.5	Review/address Mike Lesser comments on fee brief; review Nicole Zeiss draft firm fee/expense.
Nicole Zeiss	P	08/30/16	1.5	Worked on fee declaration.
TOTALS			**108.1**	**$80,330.00**

Second, the firm has identified the following expense items, which should not have been included with the Firm's Fee Petition:

Cost/Expense	Total Amount	Reason
Local Transportation	$242.28	Expenses applied to a different case or were already reimbursed.
Hotel Charge	$426.42	Expense was already reimbursed.
TOTAL	**$668.70**	

INTERROGATORY 72:

Identify any other individuals, not listed above, who have knowledge of the Interrogatories and/or the SST Litigation and explain the general nature of such knowledge.

RESPONSE TO INTERROGATORY 72:

The Firm incorporates the General Objections set forth above. The Firm further objects to the Interrogatory as vague and overbroad, inasmuch as it could be read to require identifying any person anywhere who knows anything at all about the SST Litigation. Labaton Sucharow

will construe this Interrogatory as a request that the Firm identify (to the extent not otherwise identified in its response to the Interrogatories) the principal Labaton Sucharow attorneys or staff who worked on, or have unique knowledge regarding, the topics being reviewed by the Special Master. Construed in that fashion, and subject to the foregoing objections, the Firm states the following:

The foregoing Interrogatory responses identify the principal Labaton Sucharow attorneys and staff members who worked on, or have unique knowledge regarding, the topics that the Firm understands are being reviewed by the Special Master. Should the Special Master want a more fulsome list that includes all timekeepers who recorded more than five hours to the SST Litigation, Labaton Sucharow refers the Special Master to the list of attorneys, research analysts, investigators and paralegals set forth on the Labaton Sucharow Lodestar Report (ECF No. 104-15, at 7-9).

Dated: June 9, 2017

Joan A. Lukey (BBO No. 307340)
Justin J. Wolosz (BBO No. 643543)
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Attorneys for Labaton Sucharow LLP

VERIFICATION

On behalf of Labaton Sucharow LLP, I have read Labaton Sucharow LLP's Response to Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories to Labaton Sucharow LLP – June 9 Response. The Response was prepared with the assistance of the employees, representatives, and counsel of Labaton Sucharow LLP, and the information provided is not fully within my personal knowledge. I reserve the right to make changes or additions to these responses if it appears at any time that errors or omissions have been made or if more accurate or complete information becomes available. To the extent that these responses are within my personal knowledge, I certify them to be true. To the extent that these responses are not within my personal knowledge, I have no reason to believe that they are not true.

Signed under oath under the penalties of perjury this __ day of June, 2017.

_____
Lawrence A. Sucharow, Chairman

CERTIFICATE OF SERVICE

I, Justin J. Wolosz, hereby certify that on this Ninth day of June I have caused a copy of the foregoing Labaton Sucharow LLP's Response To Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories to Labaton Sucharow LLP – June 9 Response to be served via email and overnight mail upon William F. Sinnott, Donoghue Barrett & Singal, P.C., One Beacon Street, Suite 1320, Boston, MA 02108.

Justin J. Wolosz

8150824

Exhibit C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiffs, 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, Plaintiffs, 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, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 12-cv-11698 MLW

THORNTON LAW FIRM, LLP'S JUNE 9, 2017 RESPONSES TO SPECIAL MASTER HONORABLE GERALD E. ROSEN'S (RET.) FIRST SET OF INTERROGATORIES

Pursuant to the March 8, 2017 Memorandum and Order of the Honorable Judge Mark Wolf (the "Order"), and the Federal Rules of Civil Procedure, Thornton Law Firm, LLP ("TLF") hereby submits its responses to the First Set of Interrogatories of the Special Master, the Honorable Gerald E. Rosen (Retired) ("Special Master"), as revised by the Special Master's counsel and transmitted to counsel for TLF on May 24, 2017. In those revised Interrogatories, the Special Master prioritized the Interrogatories according to a three-tiered response timeline, with responses due on June 1, 2017, June 9, 2017, and July 10, 2017. TLF has previously responded to the Special Master's June 1, 2017 Interrogatories. The Interrogatories responded to herein are the ones the Special Master has designated as due for response on June 9, 2017.

Each of TLF's responses and objections below incorporates the general objections submitted by TLF on May 26, 2017. In making the responses below, TLF relies on information presently known. TLF reserves its right to amend, modify, or supplement the responses herein as additional facts, documents, and/or information are discovered.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 12:

Explain the Firm's relationship with the U.S. Attorney's Office, including the local Boston office, and identify and describe any conversations between Thornton and the U.S. Attorneys' Office relating to the SST Litigation.

RESPONSE TO INTERROGATORY NO. 12:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. TLF notes the Special Master's May 24, 2017 clarification that this Interrogatory is

limited to conversations relating to the State Street Litigation. Subject to and without waiving its objections, TLF responds as follows:

At the end of May 2015, Garrett Bradley of TLF contacted Justin O' Connell of the U.S. Attorney's Office ("USAO") in Boston to request a meeting regarding the ongoing State Street Litigation. *See* TLF-SST-011171, TLF-SST-011173, TLF-SST-011175. This meeting, attended by Justin O'Connell and Rosemary Connolly on behalf of the USAO, among others, took place on June 2, 2015. *See* TLF-SST-011177. The purpose of the meeting was for TLF and the other Plaintiffs' firms to share information with the U.S. Attorney's Office regarding the status of the ongoing litigation. At the time, counsel for State Street was citing the government's involvement as a roadblock to settling the litigation. TLF, Lieff, and Labaton, each of which had representatives at the meeting, agreed that better communication would be beneficial to the case. In addition to convening the meeting, TLF participated in additional follow-up discussions with Ms. Connolly of the USAO after the meeting.

INTERROGATORY NO. 18:

Describe in detail all agreements between the Firm/Plaintiffs' Law Firms, on the one hand, and the ERISA firms, on the other, to allocate to the ERISA firms a fixed percentage of the total Fee Award rendered by the Court in the SST Litigation. As to any agreement that did not represent the final agreement for allocation of the Fee Award, explain the reason for modifying a previous agreement, including all persons involved in these discussions and their affiliation/firm.

RESPONSE TO INTERROGATORY NO. 18:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

In December 2013, Michael Thornton, Lawrence Sucharow, and Robert Lieff reached agreement with ERISA counsel that 9% of the total Fee Award should be allocated to the ERISA group. *See* TLF-SST-015649, TLF-SST-015758. Near the time of the filing of the Fee Petition in September 2016, Mr. Sucharow proposed awarding ERISA counsel an additional 1% of the fee for their efforts. Mr. Thornton and Mr. Lieff agreed with Mr. Sucharow's proposal.

INTERROGATORY NO. 27:

Explain how you determined the hourly rates charged for Lieff/Labaton Staff Attorneys for whom you shared costs, as reported in the Firm's Fee Petition.

RESPONSE TO INTERROGATORY NO. 27:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF determined the hourly rate charged for Staff Attorneys allocated to Thornton Law Firm and housed at Labaton or Lieff ($425 per hour) based on consultation with Labaton and Lieff. Lieff indicated to TLF that it had used a rate of $425 in the BNY Mellon Action (*In re Bank of New York Mellon Corp.*, 12-MD-02335, S.D.N.Y.). *See* TLF-SST-011263.

INTERROGATORY NO. 43:

Explain how Michael Bradley, Esq. became involved in the SST Litigation/Document Review and summarize all communications between the Firm and Michael Bradley relating to his potential involvement in the matter. Please identify all individuals who either participated in these discussions or had knowledge of Michael Bradley's involvement prior to preparing the Fee Petition.

RESPONSE TO INTERROGATORY NO. 43:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. TLF also incorporates its response to Interrogatory No. 28, submitted June 1, 2017. Subject to and without waiving its objections, TLF responds as follows:

Attorney Michael Bradley became involved in the SST Litigation in 2013, when Garrett Bradley asked him if he was willing and able to review documents. Garrett Bradley asked Michael Bradley to participate on a contingency basis, meaning that he would not be compensated unless and until a settlement was finalized and a fee awarded to TLF. This had the effect of permitting TLF to reduce its upfront cost. Michael Bradley's background as a prosecutor and as the former head of the Massachusetts Underground Economy Task Force made him additionally qualified to potentially provide a unique perspective on the documents he reviewed. Michael Bradley had contact with the following persons at TLF regarding his work on the SST Litigation: Garrett Bradley, Michael Lesser, Evan Hoffman, and Anastasia Maranian.

INTERROGATORY NO. 44:

Explain how the Firm and Michael Bradley agreed that Michael Bradley would receive an hourly rate of $500/hour as compensation for work he performed in the SST Litigation/Document Review. Please identify all individuals who participated in these discussions and/or had knowledge of the $500/hour rate prior to preparing the Fee Petition.

RESPONSE TO INTERROGATORY NO. 44:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

In 2013, when Michael Bradley began performing work on the SST Document Review, Garrett Bradley asked him how much he charged per hour for his services. Michael Bradley responded that, while he did not always charge clients on an hourly basis, he had recently charged a client $450 per hour for his services. Garrett and Michael Bradley agreed that because Michael Bradley would be performing the work on a contingent basis – *i.e.*, he would be paid only if the case resulted in the award of a fee to TLF – a slightly higher rate of $500 per hour would likely be appropriate.

Later, when preparing TLF's support for the Fee Petition, Evan Hoffman, Michael Lesser, and Garrett Bradley discussed the hourly fee for Michael Bradley's services. Garrett Bradley reached out to Michael Bradley again to confirm the $500 per hour rate.

INTERROGATORY NO. 45:

Identify and describe all work performed by Michael Bradley for or on behalf of the Firm, other than work performed as part of the SST Litigation, including the nature of that work, the total number of hours recorded, and the hourly rate/total compensation paid to Michael Bradley.

RESPONSE TO INTERROGATORY NO. 45:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

Michael Bradley has performed probate work for clients of the Thornton Law Firm. In August 2016, TLF paid him $1,689.80 for probate work performed on behalf of four TLF clients, equating to $422.45 per client. *See* TLF-SST-010704. Over the years, Mr. Bradley has also referred matters to TLF, for which he has received a one-third referral fee from TLF. These

matters include a case referred in 2010, for which he was paid $12,000 in April 2010; and a case referred in 2012, for which he was paid a referral fee of $6,333.33 in September 2012. *See id.*

INTERROGATORY NO. 46:

Identify and describe all communications relating to Michael Bradley's participation in the SST Litigation/Document Review from January 2009 through November 2016, including relating to compensation or the hourly billing rate that the Firm would charge for Michael Bradley's time spent on the matter.

RESPONSE TO INTERROGATORY NO. 46:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF refers to its responses to Interrogatories No. 28 and 44. TLF also refers to documents produced at the Bates range TLF-SST-000534 to TLF-SST-000611, and to documents identified in the Excel chart provided herewith as responsive to Requests for Production No. 46, 47, 48, 50, 51, and 52.

INTERROGATORY NO. 47:

Explain how the Firm supervised and/or performed quality control of the work performed by Michael Bradley in the SST Document Review, including the name, title, and nature of any supervising individual.

RESPONSE TO INTERROGATORY NO. 47:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

Like all Staff Attorneys participating in the SST Document Review, Michael Bradley reviewed documents in the Catalyst database hosted by Lieff. As custodian of the database, Lieff had the ability to track the tagging of documents in the database, including documents tagged by Michael Bradley. TLF did not have this capability to track and relied on Lieff, including asking Lieff at times to give TLF access to documents tagged as "hot" in the database. *See* TLF-SST-010865. TLF was aware that Lieff and Labaton had employees monitoring database metrics to quality control the work of the Staff Attorneys working on the SST Document Review. At Lieff, that employee was Kirti Dugar; at Labaton, that employee was Todd Kussin. In terms of supervising Michael Bradley's time spent performing SST Document Review, Evan Hoffman of TLF was responsible for receiving Mr. Bradley's time, and also assisted Mr. Bradley with technical and substantive issues he encountered during the review. *See, e.g,* TLF-SST-012859, TLF-SST-012864.

INTERROGATORY NO. 49:

Explain how the Law Firm determines annual billing rates for all attorneys. Please identify and describe all factors considered and/or resources relied upon in making these determinations.

RESPONSE TO INTERROGATORY NO. 49:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF performs the majority of its work on a contingency basis, and very rarely uses annual or hourly billing rates. On those matters that require specific billing rates, the attorneys of TLF set rates that accord with the experience and seniority of each attorney or professional staff

member performing work on the matter, and with rates for similar services that are common to the industry and/or have been accepted by courts in other actions.

INTERROGATORY NO. 50:

Please explain how the process described above does or does not vary in determining billing rates charged to hourly clients and why.

RESPONSE TO INTERROGATORY NO. 50:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF incorporates its response to Interrogatory No. 49 above.

INTERROGATORY NO. 51:

Please explain how the Firm determines the hourly rates charged for Staff Attorneys employed or allocated to the Firm, Firm staff, independent contractors and/or other individuals who participate in legal matters but are not associates or partners at the Firm.

RESPONSE TO INTERROGATORY NO. 51:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF incorporates its responses to Interrogatories No. 27, 49, and 50. TLF performs the majority of its work on a contingency basis, and very rarely uses annual or hourly billing rates. When it does use such rates, whether for attorneys or non-attorney staff, those rates are based on the experience of the individual, in accordance with what is common to the industry and/or has been accepted by courts in other actions.

INTERROGATORY NO. 55:

Explain how the Firm adjusts its hourly rates to reflect the geographic region in which a matter is filed/pending. If the Firm does not adjust its rates, explain why not.

RESPONSE TO INTERROGATORY NO. 55:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF incorporates its responses to Interrogatories No. 49, 50, and 51. TLF performs the majority of its work on a contingency basis, and very rarely uses annual or hourly billing rates. When it does, it looks to rates for similar services that are common to the industry and/or have been accepted by courts in other actions (not limited to geographic region).

INTERROGATORY NO. 58:

Describe in detail how the Firm prepared its Fee Petition and identify all individuals who assisted in the preparation and the nature of their contribution(s).

RESPONSE TO INTERROGATORY NO. 58:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

In preparation for the filing of the Fee Petition, TLF received a template declaration from lead counsel, Labaton, that it understood Labaton had used in previous fee petitions submitted to federal courts. *See* TLF-SST-013552. Michael Lesser of TLF was responsible for the review and drafting of the section of the TLF declaration that addressed TLF's specific contributions to

the case. Mr. Lesser, Garrett Bradley, and Evan Hoffman reviewed the TLF declaration before submitting it to Labaton. Mr. Bradley signed the declaration (Doc. 104-16).

INTERROGATORY NO. 59:

Describe in detail any review or steps taken to scrutinize or verify the time reported by the Law Firm, including time reported by Staff Attorneys allocated to the Firm, prior to submitting the Firm's Fee Petition/Lodestar calculation. If the answer is none, explain why.

RESPONSE TO INTERROGATORY NO. 59:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

With respect to Staff Attorney time, TLF references and incorporates its response to Interrogatory No. 31, in which it describes the process by which it requested, received, and accumulated hours for Staff Attorneys, which Evan Hoffman included in the master spreadsheet containing all of TLF's hours on the SST Litigation. (TLF has previously produced the most current version of this master spreadsheet at TLF-SST-000001, and has produced and/or will produce earlier iterations of it pursuant to the Special Master's Requests for Document Production.)

With respect to time spent by other TLF timekeepers, TLF accumulated and verified the hours spent through reference to calendars and contemporaneous handwritten and emailed time records. Additionally, on some occasions, TLF received and referenced records of attorneys from Labaton and Lieff to check against its own entries.

INTERROGATORY NO. 60:

Describe what, if any, steps the Law Firm took to review, verify, or compare the Fee Petitions and/or Lodestar calculations prepared by the Plaintiffs' Firms or ERISA firms with the Firm's Fee Petition prior to filing its Fee Petition with the Court. If no action was taken, explain why not.

RESPONSE TO INTERROGATORY NO. 60:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF was responsible for the preparation of Garrett Bradley's Declaration in Support of the Fee Petition (Doc. 104-16, "Declaration of Garrett J. Bradley, Esq. on Behalf of Thornton Law Firm, LLP In Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses"). As stated in the response to Interrogatory No. 58 above, TLF created this document by modifying a template provided by Labaton, which, as lead counsel, was compiling all of the supporting documents and filing the Fee Petition. TLF did not receive and did not review a copy of the declarations prepared by other counsel detailing the hours supporting their lodestar calculations. To the best of its recollection, TLF saw these documents for the first time after Labaton filed them with the court.

INTERROGATORY NO. 61:

Identify and describe all communication the Firm had with the Plaintiffs' Law Firms and/or ERISA counsel relating to the Firm's preparation of the Fee Petition, including but not limited to preparation of the Lodestar calculation, the inclusion of the Lieff and/or Labaton Staff

Attorneys for whom the Firm had paid costs, calculation of a Lodestar multiplier, and reasonableness of attorneys' fees.

RESPONSE TO INTERROGATORY NO. 61:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. TLF specifically objects to this Interrogatory, in so far as it calls on TLF to detail each and every communication, as overbroad. Subject to and without waiving its objections, TLF responds as follows:

TLF had numerous conversations with Plaintiff's counsel regarding the preparation of the Fee Petition. These discussions concerned, generally, information to be included in the fee petition, capping of applicable expenses, and use of contemporaneous or historical time rates for attorneys. Documents evidencing these communications are produced in response to RFPs 20, 21, and 35, as identified in the index accompanying TLF's production.

INTERROGATORY NO. 63:

Identify all billing entries, costs and/or expenses incurred by the Firm during the SST Litigation that the Firm did not include in its Fee Petition/Lodestar calculation, and the reasons therefor.

RESPONSE TO INTERROGATORY NO. 63:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF did not include various categories of time in its submission to the court, including at least the following:

(1) Time spent by any individual who worked fewer than 10 hours on the matter;

(2) Time spent by administrative assistants who worked with TLF partners on case-related matters;

(3) Time spent discussing the SST Litigation at weekly partners' meetings over the more than eight years that transpired between when the litigation was conceived and when it was settled;

(4) Time for certain research tasks performed by TLF attorneys relating to the litigation, including memoranda concerning fee petition and lodestar practices prepared in 2015 by a TLF attorney (Jotham Kinder). *See* TLF-SST-010742.

INTERROGATORY NO. 64:

Explain the significance of the statement made in Paragraph 4 of the Declaration of Garrett J. Bradley, Esq. On Behalf of Thornton Law Firm, LLP In Support of Lead Counsel's Motion for An Award of Attorneys' Fees and Payment of Expenses (Docket #104-16), affirming that the hourly rates included in Exhibit A to the Declaration are the Firm's "regular rates charged for their services, which have been accepted in other complex class actions." Please describe any other instances in which the Firm has submitted a Fee Petition with the same or similar language.

RESPONSE TO INTERROGATORY NO. 64:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

The language in Mr. Bradley's declaration was contained in the template declaration that TLF received from Labaton, which supplied the template to TLF in its capacity as lead counsel. As Garrett Bradley acknowledged at the hearing before the Court on March 7, 2017, the language in the declaration was not as clear as it should have been with respect to TLF. Specifically, the language concerning "regular rates . . . accepted in other complex class actions"

is inaccurate as to all of the Staff Attorneys listed in the declaration, including Michael Bradley, because TLF did not have "regular rates" for these individuals and had not submitted rates for these individuals "in other complex class actions." Rather, TLF was aware of the rates used in another FX case in which it was involved – the BNY Mellon Action – and understood the template language "accepted in other complex class actions" to refer to that Action.

As pertains to the rates listed for other individuals in the declaration – *i.e.*, TLF's attorneys and paralegal – the rates in the declaration are, with two exceptions, the same rates that TLF charged for its services in the BNY Mellon Action, and which were accepted by the court in that case. The two exceptions are the rate of Michael Lesser ($650 in the BNY Mellon Action; $700 in SST) and Evan Hoffman ($485 in the BNY Mellon Action; $535 in SST). In the case of Mr. Lesser, the $50 increase reflected his particular expertise, largely obtained through his work in the BNY Mellon Action, with FX trading cases. In the case of Mr. Hoffman, he was promoted from associate to partner in between the Fee Petition filed in the BNY Mellon Action and the SST Fee Petition.

INTERROGATORY NO. 65:

Explain the significance of the above-quoted statement as it applies to Michael Bradley's rate of $500/hour.

RESPONSE TO INTERROGATORY NO. 65:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

As Garrett Bradley acknowledged at the hearing before the Court on March 7, 2017, this statement is not accurate as it relates to Michael Bradley because TLF has not submitted time for

him in other complex class action cases. TLF refers to its response to Interrogatory No. 64 above.

INTERROGATORY NO. 66:

Do you contend that the rates listed in the Firm's Fee Petition represent the prevailing rates in the community for similar services performed by lawyers of reasonably comparable skill, experience and reputation for each of the respective tasks performed? Why or why not?

RESPONSE TO INTERROGATORY NO. 66:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

Yes, TLF believes that the rates stated its declaration in support of the Fee Petition are comparable to prevailing rates for similar services. TLF notes that these rates were approved in other litigation, including, most saliently, the BNY Mellon Action. Additionally, TLF believes that the rates it charged are justified by factors specific to the SST litigation, including the complexity of the work completed, the years the costs were carried, and the skill of those involved.

INTERROGATORY NO. 69:

Describe when and how the Law Firm first identified duplicative billing entries reflected in the Fee Petitions submitted by Lieff and/or Labaton and describe what actions, if any, the Firm took to review, confirm and/or correct those errors.

RESPONSE TO INTERROGATORY NO. 69:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF first identified duplicative billing entries after its counsel received a media inquiry, which counsel reported to TLF, specifically to Garrett Bradley. After learning the information, Mr. Bradley went to Evan Hoffman's office and asked him to print the fee applications of Lieff and Labaton. They also informed Michael Lesser. Upon review of those documents, Mr. Bradley, Mr. Hoffman, and Mr. Lesser noticed discrepancies among the filings. Mr. Bradley immediately contacted David Goldsmith and Nicole Zeiss of Labaton. In addition, Mr. Hoffman and Mr. Lesser contacted Dan Chiplock of Lieff. Upon discovery of errors, Labaton undertook the writing of a letter to the court. TLF attorneys reviewed and provided suggested revisions to the letter. *See, e.g.,* TLF-SST-015640, TLF-SST-015644.

INTERROGATORY NO. 70:

Describe in detail the Law Firm's involvement in drafting the November 10, 2016 Letter, including the full names of all individuals who contributed to the Letter or underlying review in any way, internal review performed by the Firm, and all individuals outside the firm who reviewed and/or contributed to the Letter and the nature of their contribution(s).

RESPONSE TO INTERROGATORY NO. 70:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF participated in the drafting of the November 10, 2016 both at the conception/strategy stage (*i.e.,* determining how to address the issues with the Court) and the execution stage (*i.e.,* the drafting and revising of the letter). TLF has produced documents containing discussion of the November 2016 letter and drafts reflecting TLF's edits to the letter, including at TLF-SST-

015640 and TLF-SST-015644, and at the Bates ranges identified in the Excel chart provided herewith as responsive to Request for Production No. 43.

The individuals at TLF who contributed to the review of the November 10, 2016 letter are Michael Lesser, Evan Hoffman, and Garrett Bradley. Michael Thornton was also made aware of TLF's thoughts and edits concerning the letter.

INTERROGATORY NO. 71:

To the extent the Firm was involved in the drafting of the November 10, 2016 Letter, identify and describe all documents reviewed or relied upon by Firm as part of its involvement.

RESPONSE TO INTERROGATORY NO. 71:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

In reviewing and suggesting revisions to the November 10, 2016 letter, TLF relied on various documents pertaining to Staff Attorneys, including but not limited to time records and correspondence with co-counsel regarding the assignment of Staff Attorneys to TLF. TLF relied on documents received from Special Counsel and Hire Counsel, and documents received from Labaton and Lieff.

INTERROGATORY NO. 74:

Identify, in detail, any additional errors in any communications with the Court or with the Special Master, since filing of the Fee Petition(s) and explain each step or action taken to correct each error, including all documents or information consulted or relied upon in making the correction(s).

RESPONSE TO INTERROGATORY NO. 74:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

TLF refers to its response to Interrogatory No. 75 below. TLF is not aware of any additional errors in its communications with the Court or with the Special Master.

INTERROGATORY NO. 75:

Identify and explain any mistakes you have identified in the any of the Fee Petitions, the Motion for Attorneys' Fees, and/or Fee Award, not described above.

RESPONSE TO INTERROGATORY NO. 75:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. Subject to and without waiving its objections, TLF responds as follows:

In reviewing documents in conjunction with this inquiry, TLF has identified an additional error in its declaration filed September 15, 2016. Specifically, the hours listed for Staff Attorney Jonathan Zaul contain eight extra hours. This is the result of an inadvertent double entry on TLF's master spreadsheet used to create the chart in the declaration (TLF-SST-000001), which contains two entries for Mr. Zaul dated February 18, 2015, each for eight hours.

Additionally, in the course of reviewing Michael Bradley's time records, TLF has become aware that its declaration and the underlying master spreadsheet (TLF-SST-000001) included fewer hours for Michael Bradley than recorded in his contemporaneous time entries that he submitted to TLF. This equates to approximately 43 to 48 hours, based on a comparison of his records to TLF's declaration and master spreadsheet (compare TLF-SST-000534 to TLF-SST-000611 with TLF-SST-000001).

INTERROGATORY NO. 76:

Identify any other individuals, not listed above, who have knowledge of the Interrogatories and/or the SST Litigation and explain the general nature of such knowledge.

RESPONSE TO INTERROGATORY NO. 76:

TLF incorporates the general objections in its May 26, 2017 submission to the Special Master. TLF specifically objects to the phrase "have knowledge of" as vague. Without waiving its objections, TLF responds as follows:

Between these Interrogatory Responses and the Responses submitted on June 1, 2017, TLF believes it has identified the individuals at TLF who have knowledge of the Interrogatories and/or the SST Litigation. For completeness, TLF states that the following individuals at TLF had substantive involvement in the SST Litigation: Michael Thornton, Garrett Bradley, Michael Lesser, Evan Hoffman, Jotham Kinder, Andrea Caruth (former paralegal for TLF), Katherine Brendel (former paralegal for TLF), and Anastasia Maranian (TLF's office administrator). Keith Lucca and Hadley Sweeney in TLF's Accounting Department may have had marginal roles relating to accounting that concerned the SST Litigation. In addition, other partners at TLF were aware of the SST Litigation, but did not play any substantive role in it.

Dated: June 9, 2017

Respectfully submitted,

/s/ Brian T. Kelly

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