

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.

**JOINT¹ MOTION TO EXTEND TIME FOR FILING SPECIAL MASTER'S
MEMORANDUM IN SUPPORT OF HIS SUPPLEMENT TO HIS REPORT AND
RECOMMENDATIONS AND PROPOSED PARTIAL RESOLUTION OF ISSUES
FOR THE COURT'S CONSIDERATION**

¹ The Special Master and Labaton join in this motion. At the time of filing, the ERISA Firms had not yet signed on to this motion.

On October 16, 2018, the Court directed the Special Master, Labaton, and the ERISA Firms to submit memoranda in support of the Proposed Partial Resolution. Dkt. # 494. As part of the Proposed Partial Resolution submitted on October 10, 2018, Labaton and the Special Master agreed that Labaton would retain James Holderman, former Chief Judge of the United States District Court, Northern District of Illinois, to ensure Labaton's fee sharing agreements and other policies and agreements bearing on fee applications are in compliance with applicable rules and preferred practices. Judge Holderman and Labaton require additional time to address the terms of retention. In the event Judge Holderman and Labaton cannot agree on retention terms, for whatever reason, Labaton has begun efforts to identify and secure another former member of the judiciary who can adequately fulfill this role and is acceptable to the Special Master and the Court under the Proposed Partial Resolution.

To allow Labaton sufficient time to complete these efforts, and to appropriately amend the Proposed Partial Resolution to reflect Labaton's final retention should Judge Holderman not serve, the Special Master respectfully requests a brief extension of time, or until October 30, 2018, for the Master, Labaton, and the ERISA Firms to submit their memoranda addressing the Proposed Partial Resolution or an amended Resolution.

Respectfully submitted,

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

By his attorneys,

/s/ William F. Sinnott

William F. Sinnott (BBO #547423)

Elizabeth J. McEvoy (BBO #683191)

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Dated: October 24, 2018

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2018, I caused the foregoing Motion for Filing Late the Proposal Partial Resolution of Issues for the Court's Consideration to be served electronically 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
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Plaintiff,

No. 11-cv-10230-MLW

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STATE STREET BANK AND TRUST COMPANY,

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ARNOLD HENRIQUEZ, MICHAEL T. COHN,
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THE ANDOVER COMPANIES EMPLOYEE
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STATE STREET BANK AND TRUST COMPANY,

Defendant.

_____ /

SPECIAL MASTER'S REPORT CONCERNING REMAINING OBJECTIONS
RAISED BY LIEFF CABRASER HEIMANN & BERNSTEIN AND
THE THORNTON LAW FIRM

On October 16, 2018, the Court ordered the Special Master, Lieff Cabraser Heimann and Bernstein (“Lieff”), and the Thornton Law Firm (“Thornton”) to confer and report to the Court¹, by October 25, 2018, as to whether they have agreed to narrow the objections made to the Master’s Report and Recommendations, and to identify the remaining objections. The Special Master’s counsel conferred separately with each firm. As a result of those discussions, the Special Master reports that several legal and factual² issues remain in dispute.

As to Lieff, the following legal objections remain:

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 agency contract attorneys, whether the contract attorneys’ time should be treated as an expense rather than a legal fee reported on the attorney lodestar, and if treated as an expense, whether Lieff should disgorge or forfeit the total contract attorney lodestar, with or without a lodestar multiplier.
3. In addition to the matters identified above which were raised, and briefed, by Lieff in its Objections to the Special Master’s Report and Recommendations filed with the Court previously, the Master has identified further issues relating to the accuracy of Lieff’s disclosures to the Court. During the conferral call, and again today prior to the filing of this Report, Lieff has objected to the Master’s inclusion of this item in this submission and indicated that it will respond in its own submission.

As to Thornton, the following legal objections remain:

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 lodestar³, and, if so, how much.

¹ Lieff and Thornton have chosen to file separate submissions.

² In addition to raising several legal objections, Thornton has objected to several of the Special Master’s finding of fact. Those findings of fact are closely tied to, and in some instances significantly overlap with, the Master’s legal conclusions, which will be addressed in the Master’s forthcoming responses.

³ Thornton’s objection to the Special Master’s recommendation that the firm disgorge that 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 amounts with which the Master takes issue 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.

2. Whether time expended by the staff and contract attorneys reported on Thornton's lodestar should be calculated as an expense, 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.

The Special Master respectfully requests until November 16, 2018 to respond in writing to the issues remaining in dispute. Thornton and Liefk do not object. The Special Master further assents to providing Liefk and Thornton until December 7, 2018 (as requested by Thornton) to respond in writing to the Master's responses.

Dated: October 25, 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 foregoing document was filed electronically on October 25, 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, 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
RESPONSE TO OCTOBER 16, 2018 COURT ORDER**

The Thornton Law Firm (“TLF”) informs the Court that, pursuant to the Court’s October 16, 2018 Order (ECF 494), it conferred with counsel for the Special Master regarding a potential agreement “to reduce the objections to which the Master must respond and the court must decide, and identif[ication] of the remaining objections.” TLF informs the Court as follows:

1. TLF does not anticipate objecting to the proposed resolution of matters relating to Labaton and the ERISA law firms, except to the extent that the proposed resolution implies in any way that TLF is responsible for any disgorgement related to the “double counting” issue. Pursuant to the Court’s October 25, 2018 Electronic Order (ECF 502), TLF will provide its full

response to the proposed resolution before November 5, 2018 at noon.

2. TLF maintains its objections to the Special Master's Report and Recommendations as set forth in its Objections. In particular, TLF has objected, and continues to object, to the Special Master's recommendations that: (1) TLF should disgorge one-third of the amount of the "double counting" error; (2) Rule 11 sanctions should be imposed on TLF and Garrett Bradley; (3) Garrett Bradley should be referred to the Board of Bar Overseers; (4) the Customer Class Law Firms should disgorge the difference between the contract attorney lodestar rates and the contract attorney rates had they been listed as expenses; (5) a monitor should be appointed to oversee TLF; and (6) TLF should disgorge nearly \$200,000 related to Michael Bradley's work.

3. In the interest of efficiency, the Special Master need not respond to, and the Court need not decide, TLF's objection to the recommended payment of \$3.4 million to ERISA counsel (i.e., section VIII of TLF's Objections, pages 92 to 103). The Special Master made the ERISA recommendation as to Labaton only and, pursuant to the proposed resolution, Labaton agreed to pay \$2.75 million to the ERISA law firms and the ERISA law firms agreed to accept that amount in lieu of a \$3.4 million payment. TLF originally objected to this recommendation, although it did not affect TLF, because its subsidiary factual findings were (and are) demonstrably false. The Court should still review this section of TLF's objections because it serves as further evidence of the Report and Recommendations' unreliability, but there is nothing for the Special Master to respond to or for the Court to decide with respect to TLF.

4. TLF continues to object to all of the subsidiary legal conclusions and factual findings supporting the recommendations in paragraph 2 above, as set forth in its Objections, with the following exceptions:

a. The Special Master need not respond to, and the Court need not decide, TLF's objection to the Special Master's finding that Michael Bradley's lodestar rate should be reduced to \$250. TLF detailed on pages 83 to 88 of its Objections why the recommended Michael Bradley rate of \$250 (which is lower than the approved lodestar rates for both Lief and Labaton paralegals) is unfair and unsupported by the facts. TLF continues to object to the recommendation that it should disgorge nearly \$200,000 for Michael Bradley's work for the reasons stated in section VII(A) of its Objections (pages 89-92). However, the Court need not determine a "reasonable" lodestar rate for Michael Bradley because any reduction in Michael Bradley's lodestar rate is immaterial to the fee award. Even if all value associated with Michael Bradley's work was removed from the lodestar—which would be unfair because the Special Master has acknowledged that Michael Bradley performed work that is supported by time records—there would be no material effect on TLF's lodestar or the overall lodestar. The overall multiplier would be 2.01 after accounting for the double-counted time¹ *and* removing all of Michael Bradley's time.

b. The Special Master need not respond to, and the Court need not decide, TLF's objection to the Special Master's suggestion that the \$425 rate for staff attorneys listed on the TLF's lodestar was not reasonable (section I(D) of TLF's Objections, pages 22 to 26). The Special Master stated on page 181 of the Report and Recommendations that "an adjustment of the amounts billed in Thornton's lodestar for staff attorneys will be required" due to the \$425 per hour rate. TLF objected to the suggestion that the TLF rate was unreasonable, particularly because TLF's weighted and average staff attorney rates

¹ See Goldsmith Letter to Court, November 10, 2016 (ECF 116).

were lower than Lief's weighted and average staff attorney rates and the Special Master did not suggest that Lief's staff attorney rates were unreasonable. Ultimately, however, the Special Master did not make any recommendation with respect to the TLF staff attorney rate. Therefore, to the extent there is no pending recommendation, there is no need for the Special Master to respond to the objection or for the Court to decide the objection. Although there is no decision to render on the reasonableness of TLF's staff attorney rate, the Court should still review this section of TLF's Objections because it demonstrates the Report and Recommendations' overall inconsistency.

5. TLF understands that the Special Master intends to request until November 16, 2018 to reply to TLF's Objections. TLF does not object to this response date. Given that the Special Master will have had nearly five months to respond to TLF's Objections (whereas TLF prepared its Objections within six weeks of receipt of the Special Master's Report and Recommendations), TLF respectfully requests that the Court grant TLF three weeks to prepare and file a sur-reply. Counsel for the Special Master has confirmed that the Special Master does not object to this timeframe.

Respectfully submitted,

/s/ Brian T. Kelly
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jsharp@nixonpeabody.com

Dated: October 25, 2018

Counsel for the Thornton Law Firm LLP

CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically on October 25, 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

**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 REPORT ON ITS REMAINING
OBJECTIONS TO THE SPECIAL MASTER'S REPORT AND RECOMMENDATIONS**

Pursuant to the Court's Order dated October 16, 2018 (ECF No. 494), Loeff Cabraser Heimann & Bernstein, LLP ("Loeff Cabraser") and counsel for the Special Master (the "Master") conferred in order to determine whether Loeff Cabraser's objections to the Special Master's Report and Recommendations (ECF No. 357) (the "Report") could be narrowed. That conferral did not result in the narrowing of Loeff Cabraser's objections to the Report. Instead, the Master has used the conferral as an opportunity to expand the matters in dispute by raising entirely new, albeit unspecified, claims regarding Loeff Cabraser's disclosures to the Court. *See* ECF No. 503 at 2.

The objections that were actually raised to the Report and that remain to be adjudicated as to Loeff Cabraser are addressed in full in the Response and Objections of Loeff Cabraser Heimann & Bernstein, LLP to the Special Master's Report and Recommendations (ECF No. 367) ("LCHB's Response and Objections") and supporting materials, and may be summarized as follows:

First, should Loeff Cabraser "disgorge" some portion of the roughly \$4.1 million of overstated lodestar that was used as a cross-check to evaluate the reasonableness of the awarded fee in this case (and if so, how much)? *See* LCHB's Response and Objections at 67-77 (ECF No. 367); *see also id.* at 1-4, 6-8, 35-40, 47-48, 61-66, 98-100; Expert Decl. of William P. Rubenstein ("Rubenstein I Report") at 1-3, 10-12, 30-34 (ECF No. 369-8); Decl. of William P. Rubenstein in Support of Loeff Cabraser Heimann & Bernstein, LLP's Response and Objections to the Special Master's Report and Recommendations ("Rubenstein II Report") at 17-21 (ECF No. 368).

Second, should attorneys employed by Loeff Cabraser through an agency, who did the same type and quality of work as attorneys not employed through an agency, be treated as a litigation expense rather than included in the firm's attorney lodestar for cross-check purposes?

If so, should Lieff Cabraser be required to “disgorge” the lodestar reported for those attorneys (minus the expenses incurred)? And finally, if Lieff Cabraser should “disgorge” the reported lodestar for those attorneys (minus expenses incurred), should that amount be multiplied by 1.8 as recommended by the Special Master? *See* LCHB’s Response and Objections at 77-96 (ECF No. 367); *see also id.* at 4-5, 41, 98-100; Rubenstein II Report at 9-17, 17-21 (ECF No. 368).

All of the other issues that were covered by the Special Master’s investigation, such as the accuracy and truthfulness of the individual attorneys’ fee declarations and the reasonableness of the hourly rates reported for attorneys (including staff attorneys), as well as responsibility for the Chargois issues, were resolved by the Special Master in Lieff Cabraser’s favor, and hence are not matters in dispute before the Court. *See, e.g.,* LCHB’s Response and Objections at 1-2, 13 n. 33, 57-64, and 80 n. 309 (ECF No. 367); *see also* Report at 6 (reasonableness of fee award); 58 n. 44 (stating that Labaton and Thornton – but *not* Lieff Cabraser – lacked “hourly clients” that would justify the language regarding “regular rates charged” that appeared in the firms’ fee declarations); 70-73 (qualifications and quality of work performed by Lieff Cabraser’s staff attorneys); 106, 109-13, 287-89, 301-02, 331, 350-353 (Lieff Cabraser’s unawareness of the key aspects of the Chargois arrangement, and its having been “misled into agreeing to share in the Chargois payment”); 125 (excellence of the result obtained for the class); 151-56 (sophistication of plaintiffs’ counsel, and the justification for their billing rates); 164-80, 365-66 (reasonableness of counsel’s hours and rates, including those of Lieff Cabraser’s staff attorneys); 203, 209-13 (Lieff Cabraser’s keeping of accurate and contemporaneous time records); and 245-46 (the reasonableness of lodestar multipliers of up to 4.0 times the reported lodestar) (ECF No. 357).

Lieff Cabraser objects to the raising of unspecified “further” issues by the Special Master at this time as beyond the scope of what was permitted by the Court’s October 16, 2018 Order. The Court’s October 16, 2018 Order directed the parties to “confer and report whether they have

agreed to *reduce* the objections to which the Master must respond and the court must decide, and identify the *remaining* objections.” ECF No. 494 (emphasis supplied). The Master was not authorized to use the conference as an opportunity to raise entirely new claims never previously asserted in the course of his lengthy investigation and nowhere mentioned in his several hundred page Report. Furthermore, the Master fails to explain what those newfound issues are, and why he failed to address them in his Report. If the Court is nonetheless willing to allow the Master to raise new issues at this time, the Master should be required *now* to (a) state with specificity what those issues are, (b) provide a detailed basis for those new claims, and (c) explain why he did not previously raise these new claims in a timely fashion.

Dated: October 25, 2018

Respectfully submitted,

By: /s/ Richard M. Heimann

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Counsel for Lief Cabraser Heimann & Bernstein, LLP

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will thereby be served on this date upon counsel of record for each party identified on the Notice of Electronic Filing.

October 25, 2018

/s/ Richard M. Heimann

Richard M. Heimann

**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

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No. 12-cv-11698 MLW

**LABATON SUCHAROW LLP'S SECOND SUBMISSION OF DECLARATIONS IN
RESPONSE TO COURT'S OCTOBER 16, 2018 ORDER (ECF NO. 494)**

Labaton Sucharow LLP ("Labaton") respectfully submits, as Exhibits 1 and 2 hereto, the
Declarations of Christopher J Keller, Esq. and Eric J. Belfi, Esq., in response to Paragraph 2 of

the Court's October 16, 2018 Order (ECF No. 494) and as directed in Court during the October 16, 2018 hearing in this matter.

Dated: October 25, 2018

Respectfully submitted,

By: /s/ Joan A. Lukey

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Counsel for Labaton Sucharow LLP

CERTIFICATE OF SERVICE

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

/s/ Joan A. Lukey

Joan A. Lukey

Exhibit 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM,)	
on behalf of itself and all others similarly situated)	
)	No. 11-cv-10230 MLW
Plaintiffs,)	
)	
v.)	
)	
STATE STREET BANK AND TRUST COMPANY,)	
)	
Defendant)	
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ARNOLD HENRIQUEZ, MICHAEL T. COHN,)	
WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND)	
and those similarly situated,)	No. 11-cv-12049 MLW
)	
v.)	
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STATE STREET BANK AND TRUST COMPANY,)	
STATE STREET GLOBAL MARKETS, LLC and)	
DOES 1-20)	
)	
Defendants.)	
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THE ANDOVER COMPANIES EMPLOYEES SAVINGS)	
AND PROFIT SHARING PLAN, on behalf of itself and)	
JAMES PEHOUSHEK-STRANGELAND, and all others)	
similarly situated,)	
)	No. 11-cv-11698 MLW
v.)	
)	
STATE STREET BANK AND TRUST COMPANY,)	
)	
Defendant.)	
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DECLARATION OF CHRISTOPHER J. KELLER

I, CHRISTOPHER J. KELLER, declare as follows:

1. I am a partner of Labaton Sucharow LLP (“Labaton” or “the Firm”). I submit this

Declaration in response to the Order of the Court dated October 17, 2018, which directed that:

Eric Belfi, Esq., and Christopher Keller, Esq., of Labaton shall each, by October 25, 2018, submit an affidavit addressing whether Labaton has or had any agreement(s) to share fees, whether or not memorialized in written contracts, with Damon Chargois, Esq. and/or Tim Herron, Esq. concerning clients or potential clients in addition to Arkansas Teachers Retirement System, and whether Labaton has or had written or unwritten agreements to share fees with anyone else solely for assistance in obtaining clients for Labaton.

ECF 494 at 2.

2. During the status conference held on October 15, 2018, the Court questioned my partner, Michael Canty, concerning certain emails cited by the Master in the Special Master's First Submission Of Documents To Supplement The Record (Doc. 472-1) regarding Chargois & Herron's development of clients other than Arkansas Teacher Retirement System ("ATRS"). *See, e.g.* Transcript at 69, l. 3-25. In response to that inquiry, Labaton had an agreement with Chargois & Herron LLP, described in drafts exchanged between the two firms but never executed, to share attorney fees generated through representation of institutional investor clients, *e.g.*, pension funds, that Labaton and Chargois & Herron developed jointly. From Labaton's perspective, the agreement applied only to circumstances in which the institutional investor client was lead plaintiff or co-lead plaintiff in a class action. ATRS ended up being the only institutional client or other client that Labaton and Chargois & Herron succeeded in developing jointly.

3. Outside the scope of the agreement described in paragraph 2, Chargois serves as local counsel, in the traditional meaning, in two non-class action matters against BP P.L.C., both pending in the Southern District of Texas. *See Arkansas Teacher Retirement System et al. v. BP P.L.C. et al.*, Case No. 4:14-cv-00457 (S.D. Tex.) and *Virginia Retirement System et al. v. BP P.L.C. et al.*, Case No. 4:14-cv-01085 (S.D. Tex.). Both of these cases are in the MDL known as *In re BP P.L.C. Securities Litigation*. This is not a client referral relationship. If and when the

cases settle or plaintiffs obtain a favorable judgment, Chargois will be entitled to a fee based on the work he performed as local counsel in the cases.

4. Additionally, Labaton and Mashayekh & Chargois were jointly retained by seven clients related to the Takata air bag product liability case, *In re Takata Airbag Product Liability Litigation*, MDL No. 2599. There were no complaints filed on their behalf; and Labaton was not named to a lead plaintiffs' counsel position. Had Labaton been named lead counsel or co-lead counsel and used these clients on the Amended Complaint, Mashayekh & Chargois would have jointly represented those clients on the case and would have been entitled to a fee for work that they performed on the case. However, that never came to pass; and no fees were paid, or will be paid, to Mashayekh & Chargois. Labaton was paid in connection with a partial settlement for work that it performed on the case.

5. Also outside the scope of the agreement described in paragraph 2, Chargois's current law firm, Mashayekh & Chargois, referred a non-institutional business entity client to Labaton in or about October 2014. In that antitrust matter, *In re Capacitors Antitrust Litigation*, Master File No.3:14-cv-03264-JD (N.D. Cal.), Chargois was listed on the initial complaint, *Quathimatine Holdings, Inc. v. Elna Co., Ltd. et al*, 3:14-CV-4704 (D. Cal.),, provided assistance in representing the client in that individual case, and continues to jointly represent the client with Labaton. Following partial settlement of the case, Mashayekh & Chargois received \$23,655 (i.e., 10 percent of the fee awarded to Labaton to date). Chargois is entitled to a fee of 10 percent of future fees Labaton receives in the case. B.

6. The Court also questioned, "whether Labaton has or had written or unwritten agreements to share fees with anyone else solely for assistance in obtaining clients for Labaton" ECF 494 at 2. I am unaware of any current or on-going agreements, whether written or

unwritten, that Labaton has to share fees with anyone else solely for assistance in obtaining clients for Labaton, i.e., a bare referral fee. By policy, all current or on-going referral relationships must be committed to writing and be in compliance with New York's strict ethics rules governing referral agreements. I am not aware of any written or unwritten bare referral agreement with anyone else since mid-2007 when Labaton Sucharow LLP was established (after a division of the firm as it previously existed). Labaton does have ongoing agreements where an attorney has an interest in cases based in part on the fact that a lawyer originally helped facilitate that relationship. However, in all such cases (other than Chargois) the referring attorney has provided assistance in representing the client with Labaton. Indeed, it was always the intention, including with Chargois, that the referring counsel would play an important role locally with the client. To my knowledge, the Chargois situation was and is an outlier.

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

Executed this 25th day of October, 2018.

s/ Christopher J. Keller
Christopher J. Keller

Exhibit 2

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM,)	
on behalf of itself and all others similarly situated)	
)	No. 11-cv-10230 MLW
Plaintiffs,)	
)	
v.)	
)	
STATE STREET BANK AND TRUST COMPANY,)	
)	
Defendant)	
)	
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ARNOLD HENRIQUEZ, MICHAEL T. COHN,)	
WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND)	
and those similarly situated,)	No. 11-cv-12049 MLW
)	
v.)	
)	
STATE STREET BANK AND TRUST COMPANY,)	
STATE STREET GLOBAL MARKETS, LLC and)	
DOES 1-20)	
)	
Defendants.)	
)	
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THE ANDOVER COMPANIES EMPLOYEES SAVINGS)	
AND PROFIT SHARING PLAN, on behalf of itself and)	
JAMES PEHOUSHEK-STRANGELAND, and all others)	
similarly situated,)	
)	No. 11-cv-11698 MLW
v.)	
)	
STATE STREET BANK AND TRUST COMPANY,)	
)	
Defendant.)	
)	
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DECLARATION OF ERIC J. BELFI

I, ERIC J. BELFI, declare as follows:

1. I am a partner of Labaton Sucharow LLP (“Labaton” or “the Firm”). I submit this

Declaration in response to the Order of the Court dated October 17, 2018, which directed that:

Eric Belfi, Esq. . . . shall . . . by October 25, 2018, submit an affidavit addressing whether Labaton has or had any agreement(s) to share fees, whether or not memorialized in written contracts, with Damon Chargois, Esq. and/or Tim Herron, Esq. concerning clients or potential clients in addition to Arkansas Teachers Retirement System, and whether Labaton has or had written or unwritten agreements to share fees with anyone else solely for assistance in obtaining clients for Labaton.

ECF 494 at 2.

2. With respect to the Court’s inquiry as to “whether Labaton has or had any agreement(s) to share fees, whether or not memorialized in written contracts, with Damon Chargois, Esq. and/or Tim Herron, Esq. concerning clients or potential clients in addition to Arkansas Teacher Retirement System” (ECF 494 at 2), I state the following: Labaton has or had three additional referral agreements with Chargois and Heron beyond the Arkansas Teacher Retirement System Agreement. First, Labaton had an agreement with Chargois & Herron LLP, and specifically with Damon Chargois, whereby Chargois would work with Labaton to develop institutional clients, e.g., pension funds, jointly. The expectation and original intent of this agreement was that Damon Chargois would provide legal assistance with those potential clients and would be involved in representing the client in the cases. If Chargois was able to help jointly develop these clients, he would be entitled to receive up to 20% of Labaton’s fees relating to these clients, if, at least as Labaton understood the agreement, the client was the lead plaintiff or co-lead plaintiff. However, other than the Arkansas Teacher Retirement System (“ATRS”), those efforts were unsuccessful. Chargois never developed any pension fund clients beyond ATRS.

3. Second, in or about October 2014, Damon Chargois’s current law, Mashayekh & Chargois, referred a client to Labaton in an antitrust matter, where Labaton has no leadership role and serves as additional counsel. In that case, *In re Capacitors Antitrust Litigation*, Master

File No.3:14-cv-03264-JD (N.D. Cal.). Mashayekh & Chargois was named on the initial complaint, *Quathimatine Holdings, Inc. v. Elna Co., Ltd.* et al, 3:14-CV-4704 (D. Cal.), provided assistance in representing the client in that individual case, and continues to jointly represent the client with Labaton. Following partial settlement of the case, Mashayekh & Chargois received \$23,655, i.e., 10% of the fee awarded to Labaton to date. Mashayekh & Chargois is entitled to a fee comprised of ten percent of all fees received in this case by Labaton.

4. Additionally, Labaton and Mashayekh & Chargois were jointly retained by seven clients related to the Takata air bag product liability case, *In re Takata Airbag Product Liability Litigation*, MDL No. 2599. There were no complaints filed on their behalf; and Labaton was not named to a lead plaintiffs' counsel position. Had Labaton been named lead counsel or co-lead counsel and used these clients on the Amended Complaint, Mashayekh & Chargois would have jointly represented those clients on the case and would have been entitled to a fee for work that they performed on the case. However, that never came to pass; and no fees were paid, or will be paid, to Mashayekh & Chargois. Labaton was paid in connection with a partial settlement for work that it performed on the case.

5. Separately, and as discussed during my deposition before the Special Master, Chargois and Mashayekh & Chargois were retained and have filed an appearance as local counsel for plaintiffs in two individual actions that are part of an MDL proceeding in the Southern District in Texas. This is not a referral relationship. In these cases, Chargois has filed a notice of appearance, has appeared in court, and has filed documents on behalf of the clients. If and when the case settles, Chargois will be entitled to a fee based on the work he performed in the case. The MDL is called *In re BP P.L.C. Securities Litigation*. The two individual actions are *Arkansas Teacher Retirement System, et al. v. BP P.L.C. et al.*, Case No. 4:14-cv-00457

(S.D. Tex.) and *Virginia Retirement System, et al. v. BP P.L.C. et al.*, Case No. 4:14-cv-01085

(S.D. Tex.). If and when the cases settle or plaintiffs obtain a judgment, Chargois' law firm will be compensated as local counsel, not as a referring attorney.

6. Aside from ATRS and the clients in the *Capacitors* and *Takada* matters, Chargois and/or Herron never referred any additional clients to Labaton Sucharow and there are no other referral agreements with Chargois and/or Herron.

7. With respect to the Court's inquiry as to "whether Labaton has or had written or unwritten agreements to share fees with anyone else solely for assistance obtaining clients for Labaton," ECF 494 at 2, to my knowledge, there are not, and have not been, any other agreements, written or unwritten to share fees with anyone else solely for that attorney's assistance in obtaining clients for Labaton, i.e., a bare referral agreement, since mid-2007 when Labaton Sucharow LLP was established (after a division of the firm as it previously existed). Labaton does have ongoing referral arrangements where an attorney has an interest in cases based in part on the fact that the lawyer originally referred the client and helped facilitate the relationship. However, in all such cases other than Chargois, the referring attorney has provided assistance in representing the clients in the case with Labaton.

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

Executed this 25th day of October, 2018.

/s/ Eric J. Belfi
Eric J. Belfi