

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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

Plaintiff,

vs.

No. 11-cv-10230-MLW  
**Leave to File Under Seal  
Requested 5/14/2018**

STATE STREET BANK AND TRUST COMPANY,

Defendant.

\_\_\_\_\_ /

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

Plaintiffs,

vs.

No. 11-cv-12049-MLW

STATE STREET BANK AND TRUST COMPANY,

Defendant.

\_\_\_\_\_ /

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

Plaintiffs,

No. 12-cv-11698-MLW

STATE STREET BANK AND TRUST COMPANY,

Defendant.

\_\_\_\_\_ /

**SPECIAL MASTER’S MOTION TO SEAL FINAL REPORT AND  
RECOMMENDATIONS**

Pursuant to Local Rule 7.2, and as provided for in paragraphs 7 and 11 of the Court's March 8, 2017 Order, the Special Master hereby moves this Honorable Court to permit the Special Master's Report and Recommendations, including the Executive Summary and the exhibits thereto (collectively, the "Report"), as well as the complete record of evidence compiled in this case, to be filed under seal until further Court order. Pursuant to the March 8 Order, the Special Master has "preserve[d] a complete record of the evidence concerning his recommended findings of fact and [] conclusions of law." March 8, 2017 Order, ¶ 11.

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

Dated: May 14, 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  
Boston, MA 02108  
Telephone: (617) 720-5090  
Facsimile: (617) 720-5092  
Email: [wsinnott@barrettsingal.com](mailto:wsinnott@barrettsingal.com)  
Email: [emcevoy@barrettsingal.com](mailto:emcevoy@barrettsingal.com)

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STATE STREET BANK AND TRUST COMPANY,

Defendant.

SPECIAL MASTER'S MOTION TO SEAL FINAL REPORT AND  
RECOMMENDATIONS

Pursuant to the October 24, 2017 Order (Docket No. 208),  
the Special Master's Report and Recommendation and  
Executive Summary are hereby temporarily sealed to permit the  
parties to propose redactions and the court to decide  
what redactions, if any, are justified. Wolk, D.J. 5/15/18

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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No. 12-cv-11698 MLW

**CUSTOMER CLASS COUNSELS' RESERVATION OF RIGHTS  
REGARDING PAYMENT TO THE COURT ON FRIDAY, MAY 11, 2018**

Labaton Sucharow LLP (“Labaton”), Lief Cabraser Heimann & Bernstein LLP (“Lief”), and the Thornton Law Firm (“TLF”) (collectively, “Customer Class Counsel”) reserve all rights related to the payment to the Court in the amount of \$800,000 made pursuant to this Court’s April 23, 2018 Order (ECF 217 at ¶ 2). The payment was made to ensure timely compliance with the Court’s Order. However, Customer Class Counsel reserve all rights with regard to seeking an accounting, clarification, or any other appropriate remedy in connection with the payment.

Dated: May 15, 2018

Respectfully submitted,

By: /s/ Joan A. Lukey

Joan A. Lukey (BBO No. 307340)  
Justin J. Wolosz (BBO No. 643543)  
Stuart M. Glass (BBO No. 641466)  
CHOATE, HALL & STEWART LLP  
Two International Place  
Boston, MA 02110  
Tel.: (617) 248-5000  
Fax: (617) 248-4000  
joan.lukey@choate.com  
jwolosz@choate.com  
sglass@choate.com

*Counsel for Labaton Sucharow LLP*

By: /s/ Richard M. Heimann

Richard M. Heimann (*pro hac vice*)  
Lief Cabraser Heimann & Bernstein, LLP  
275 Battery Street, 29th Floor  
San Francisco, CA 94111  
Tel: (415) 956-1000  
Fax: (415) 956-1008  
rheimann@lchb.com

*Attorney for Lief Cabraser Heimann & Bernstein, LLP*

By: /s/ Brian T. Kelly

Brian T. Kelly, Esq. (BBO No. 549566)

Nixon Peabody LLP

100 Summer Street

Boston, MA 02110

Tel.: (617) 345-1000

Fax: (617) 345-1300

bkelly@nixonpeabody.com

*Counsel for The Thornton Law Firm LLP*

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to all counsel of record on May 15, 2018.

/s/ Justin J. Wolosz  
Justin J. Wolosz

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No. 12-cv-11698 MLW

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



Labaton Sucharow LLP (“Labaton”), Lief Cabraser Heimann & Bernstein LLP (“Lief”), and the Thornton Law Firm (“TLF”) (collectively, “Customer Class Counsel”) respectfully move for clarification or modification of the scope of the record to be filed in this case. The Special Master, in his Motion to Seal Final Report and Recommendations filed on May 14, 2018, indicates an intention to file “the complete record of evidence compiled in this case,” apparently including tens of thousands of pages of documents produced in discovery. As described below, Customer Class Counsel move for a clarification or modification of the Court’s March 8, 2017 Order (Docket No. 173 at ¶ 11), as reiterated in the Court’s March 1, 2018 Order (Docket No. 216 at p. 2), to limit the filing of the documents produced in discovery to that which would traditionally be part of a judicial record, i.e., (a) the exhibits to the Special Master’s Report, (b) such additional documents as the Master may wish to add, (c) such additional documents as any party feels is appropriate in the *de novo* review period, and (d) any other documents the Court requests.

As grounds for this Motion, Customer Class Counsel respectfully say:

1. On March 1, 2018, the Court confirmed that, in addition to the Master’s Report and Recommendation, “[t]he complete record of the evidence concerning the Master’s recommended findings of fact and conclusions of law must also be filed. See Mar. 8, 2017 Memorandum and Order (Docket No. 173), ¶ 11.” Docket No. 216 at 2. The filing of the record, like that of the Report and Recommendation, was directed to be under seal. *Id.*

2. Because the Master’s mandate was to “investigate and prepare a Report and Recommendation concerning all issues relating to the attorneys’ fees, expenses, and service awards previously made in this case,” (Docket No. 173 at ¶ 2), the “record” as referenced above has been interpreted by the Master as including the voluminous documents produced pursuant to

the Master’s two-phase requests for production of documents. The production by the three Customer Class Counsel firms in the first phase of the production included over 176,000 pages. The production in the second phase included more than 58,000 pages. A substantial portion of these tens of thousands of pages is highly unlikely to be of significance to the Court’s *de novo* review of the Master’s Report and Recommendation, including background documents pertaining to general operations,<sup>1</sup> some of which are proprietary to the firms.<sup>2</sup> Among the documents requested and produced were also materials containing personal information of individuals,<sup>3</sup> attorney/client privileged documents in non-ATRS matters,<sup>4</sup> and materials proprietary to the operation of the individual law firms.<sup>5</sup> Each Customer Class Counsel firm would be required to expend substantial time internally, and to bear substantial outside legal fees or in Lieff’s case lost opportunity costs,<sup>6</sup> determining what pages the firm should ask the Court to redact or keep under seal. In addition, the review of redaction requests pertaining to a universe of more than 234,000 pages would require the Court to expend an extraordinary level of resources and could require the Court to “scrutinize carefully public claims of access,” *see Anderson v. Cryovac, Inc.*, 805 F.2d 1, 13 (1st Cir. 1986), in circumstances where the documents are not traditionally part of the judicial record.

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<sup>1</sup> For example, all “invoices, and/or other records” relied upon in preparing Labaton’s Fee Petition. Special Master Honorable Gerald E. Rosen’s (Ret.) First Request for the Production of Documents to Labaton Sucharow LLP at ¶ 40.

<sup>2</sup> For example, “[t]he Catalyst and Relativity document databases created or used in the SST Litigation, as annotated, compiled and used in the course of the litigation and/or document review, including instructions, software, and anything else necessary to access and analyze the data therein.” *Id.* at ¶ 1.

<sup>3</sup> For example, W-2s and 1099s for the staff attorneys assigned to the State Street litigation. *Id.* at ¶ 17.

<sup>4</sup> For example, “[a]ll engagement letters, fee agreements, retention letters, RFPs, and/or other documents referring to, relating to, or evidencing terms and/or hourly rates associated with the Law Firm’s representation” of both hourly and non-hourly clients. *Id.* at ¶ 5, 6.

<sup>5</sup> For example, “[a]ll minutes, notes, recordings, memoranda or other documents relating to or created by the Law Firm’s Rate Sub-Committee during meetings to determine annual billing rates.” *Id.* at ¶ 11.

<sup>6</sup> Richard Heimann, Lieff’s internal general counsel, represents Lieff in these proceedings. Labaton and TLF are each represented by outside counsel.

3. Indeed, requiring the filing in Court of the documents produced in discovery runs the significant risk of converting materials that are *not* typically part of the judicial record into such. The United States Court of Appeals for the First Circuit has explained that “the courts of appeals have uniformly held that the public has no common law or constitutional right of access to materials that are gained through civil discovery but neither introduced as evidence at trial nor submitted to the court as documentation in support of motions or trial papers.” *United States v. Kravetz*, 706 F.3d 47, 55 (1st Cir. 2013); *see also, e.g., Anderson*, 805 F.2d at 13 (holding that there is no common law right to inspect discovery documents because “[t]here is no tradition of public access to discovery, and requiring a trial court to scrutinize carefully public claims of access would be incongruous with the goals of the discovery process.”).

4. The discovery in the proceedings before the Master, as well as the proceedings themselves before the Master, were subject to a Limited Protective Order. That Order expressly provided that “[i]n order to permit full and expeditious production of documents requested by the Special Master in the proceedings before him,” neither attorney/client privilege nor the work product doctrine would be waived by production, and “[d]ocuments and information produced in these proceedings may be used only in connection with these proceedings, and may not be otherwise used or disseminated.” Docket No. 191 at ¶¶ 1-2. In addition, in order to permit efficient evidentiary proceedings, the Limited Protective Order included provisions that “such proceedings shall be private” and transcripts or excerpts were only to be filed after Customer Class Counsel were afforded the opportunity to request that the filing be under seal. *Id.* at ¶ 4. Hence, no expectation of public access existed during any phase of the Master’s proceedings.

5. Customer Class Counsel therefore respectfully request modification of the Court’s March 8, 2017 Order, (Docket No. 173 at ¶ 11), as reiterated in the Court’s March 1, 2018 Order

(Docket No. 216 at p. 2), to limit the filing of the documents produced in discovery to (a) the exhibits to the Special Master's Report, (b) such additional documents as the Master may wish to add, (c) such additional documents as any party wishes to file in the *de novo* review period, and (d) any other documents that the Court requests.

**Local Rule 7.1 Certification**

Customer Class Counsel certify that there are no opposing counsel in these proceedings.

As a courtesy, copies have been electronically provided to the Master's counsel William Sinnott, Esq. and his colleague Elizabeth McEvoy, Esq.

Dated: May 15, 2018

Respectfully submitted,

By: /s/ Joan A. Lukey

Joan A. Lukey (BBO No. 307340)  
Justin J. Wolosz (BBO No. 643543)  
Stuart M. Glass (BBO No. 641466)  
CHOATE, HALL & STEWART LLP  
Two International Place  
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Tel.: (617) 248-5000  
Fax: (617) 248-4000  
joan.lukey@choate.com  
jwolosz@choate.com  
sglass@choate.com

*Counsel for Labaton Sucharow LLP*

By: /s/ Richard M. Heimann

Richard M. Heimann (*pro hac vice*)  
Lief Cabraser Heimann & Bernstein, LLP  
275 Battery Street, 29th Floor  
San Francisco, CA 94111  
Tel: (415) 956-1000  
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rheimann@lchb.com

*Attorney for Lief Cabraser Heimann & Bernstein, LLP*

By: /s/ Brian T. Kelly

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*Counsel for The Thornton Law Firm LLP*

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I hereby certify that this document filed through the ECF system will be sent electronically to all counsel of record on May 15, 2018.

/s/ Justin J. Wolosz

Justin J. Wolosz

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Defendants. )

MEMORANDUM AND ORDER

WOLF, D.J.

May 16, 2018

On March 8, 2017, the court appointed Retired United States District Judge Gerald Rosen as a Master to investigate and submit a Report and Recommendation concerning issues relating to the

court's award of more than \$75,000,000 in attorneys' fees in this Class Action to counsel for the plaintiff class (the "Lawyers"). In its October 24, 2017 Order, the court wrote:

The Master has informed the court that he has entered a limited protective order concerning the confidentiality of certain information he has received in discovery and informed the [Lawyers] that an opportunity would be provided for them to propose redactions to the Report and Recommendation which will be filed for the public record. In view of the foregoing, the court is modifying the March 8, 2017 Order to provide that: the Master shall file his Report and Recommendation with the court under seal; the court will provide the Report and Recommendation to the [Lawyers], under seal; and the court will establish schedules for proposed redactions and objections.

Docket No. 208 at 3. The March 29, 2017 Limited Protective Order in its most pertinent part provides that the production of documents requested by the Master would not constitute a waiver of any attorney-client privilege or any other privilege. See Docket No. 191, ¶1.

On May 14, 2018, the Master filed his Report and Recommendation, an Executive Summary of it, and referenced exhibits in both printed and electronic form.<sup>1</sup> Pursuant to the

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<sup>1</sup> On March 8, 2017, the court ordered the Master to file the complete record concerning his investigation with his Report and Recommendation. See Docket No. 73, ¶11. On March 1, 2018, the court ordered that the record be filed under seal to permit possible redactions. See Docket No. 216 at 2. The Master has informed the court that it will take several more weeks to compile the record for filing. In addition, it has not yet been determined whether it is feasible and cost-effective to have the record converted into a searchable electronic form as previously ordered. Id. Therefore,



October 24, 2017 Order, the court has temporarily sealed those submissions to provide the Lawyers an opportunity to review them and propose redactions. The court intends to decide whether any proposed redactions are justified. The court may, however, refer any redaction issues to the Master for a Report and Recommendation. The court may also, instead, ask the Master, or his counsel, to respond to any questionable requests for redactions.

In proposing redactions, the Lawyers shall bear in mind that:

In Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978), the Supreme Court acknowledged that "the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." Id. at 597 (footnotes omitted). The privilege extends, in the first instance, to "materials on which a court relies in determining the litigants' substantive rights." Anderson v. Cryovac, Inc., 805 F.2d 1, 13 (1st Cir.1986).

F.T.C. v. Standard Fin. Mgmt. Corp., 830 F.2d 404, 408 (1st Cir. 1987); see also United States v. Kravetz, 706 F.3d 47, 52, 54 (1st Cir. 2013); Siedle v. Putnam Investments, Inc., 147 F.3d 7, 9 (1st Cir. 1998). "[T]he public's right to inspect such records is not absolute." Standard Fin. Mgmt. Corp., 830 F.2d at 410. However, "only the most compelling reasons can justify non-disclosure of judicial records." Id. (quotation marks and citations omitted).

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the court has allowed the Master to submit his Report and Recommendation before submitting the record in order to permit the process of identifying proposed redactions to begin promptly.

A properly invoked attorney-client privilege may be sufficient to overcome the presumption of public access to information which is contained in judicial records. See Siedle, 147 F.3d at 9-10. In addition "privacy rights of participants and third parties are among those interests which, in appropriate cases, can limit the presumptive right of access to judicial records." Standard Fin. Mgmt. Corp., 830 F.2d at 411 (citations omitted); see also Kravetz, 706 F.3d at 61-4. "[W]here the public's right of access competes with privacy rights, it is proper for the district court, after weighing the competing interests, to edit and redact a judicial document in order to allow access to appropriate portions of the document." Id. at 62.

The burden of proving that presumptively public judicial records should be sealed is on the party objecting to public disclosure. See Standard Fin. Mgmt. Corp., 830 F.2d at 411. As the First Circuit has noted, provisions of "the local rules of the United States District Court for the District of Massachusetts [] require a party seeking to seal documents to file a motion with the district court 'each time a document or group of documents is to be filed,' D. Mass. R. 7.2(e), and to accompany such motion with 'a memorandum of reasons, including citation of supporting authorities' as well as '[a]ffidavits and other documents setting forth or evidencing facts on which the motion is based,' id. at 7.1(B)(1)." Kravetz, 706 F.3d at 59. The court is, therefore,

ordering that the Lawyers file affidavits and memoranda in support of any motions for redactions, with copies of the documents that include the proposed redactions. If attorney-client privilege, or any other privilege, is asserted, the documents and/or information at issue shall be identified and addressed with specificity. Proposed redactions concerning categories of information may be addressed more generally.

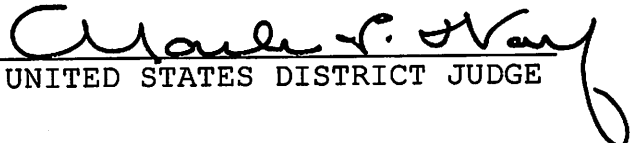
In view of the foregoing, it is hereby ORDERED that:

1. The Lawyers shall obtain forthwith from Elizabeth McEvoy, Esq., counsel for the Master, electronic versions of Executive Summary, the Report and Recommendation, and the exhibits referenced in them.

2. The Lawyers shall, by May 31, 2018, file, under seal, any motion for redactions, with documents reflecting the proposed redactions, and supporting affidavits and memoranda in the manner described in this Memorandum. Copies of these submissions shall be served on the Master. Redacted versions of these submissions shall be filed for the public record.

3. After the court decides which, if any, redactions are appropriate, it will provide the Lawyers an opportunity to propose redactions to the rest of the record that are consistent with the court's rulings.

4. Any objections to the Report and Recommendation, or any requests to adopt or modify it, shall be filed no later than seven days after the court rules on the proposed redactions.<sup>2</sup>

  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> As permitted by Federal Rule of Civil Procedure 53(f)(2), this Order provides the Lawyers more than the 21 days following the receipt of the Master's Report and Recommendation to object, or move to adopt or modify, provided by the Rule.

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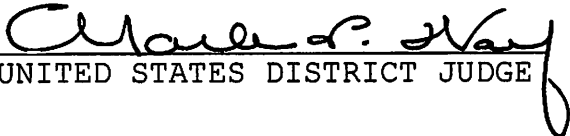
ORDER

WOLF, D.J.

May 17, 2018

The court now realizes that defendant State Street Bank and Trust Company ("State Street") should have an opportunity to review the Master's Report and Recommendation, Executive Summary, and the

exhibits referenced in them, which have all been sealed temporarily, in order to propose redactions. Therefore, it is hereby ORDERED that State Street shall obtain these documents from counsel for the Master, Elizabeth McAvoy, Esq., and respond to the attached May 16, 2018 Memorandum and Order.

  
UNITED STATES DISTRICT JUDGE



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In proposing redactions, the Lawyers shall bear in mind that:

In Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978), the Supreme Court acknowledged that "the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." Id. at 597 (footnotes omitted). The privilege extends, in the first instance, to "materials on which a court relies in determining the litigants' substantive rights." Anderson v. Cryovac, Inc., 805 F.2d 1, 13 (1st Cir.1986).

F.T.C. v. Standard Fin. Mgmt. Corp., 830 F.2d 404, 408 (1st Cir. 1987); see also United States v. Kravetz, 706 F.3d 47, 52, 54 (1st Cir. 2013); Siedle v. Putnam Investments, Inc., 147 F.3d 7, 9 (1st Cir. 1998). "[T]he public's right to inspect such records is not absolute." Standard Fin. Mgmt. Corp., 830 F.2d at 410. However, "only the most compelling reasons can justify non-disclosure of judicial records." Id. (quotation marks and citations omitted).

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the court has allowed the Master to submit his Report and Recommendation before submitting the record in order to permit the process of identifying proposed redactions to begin promptly.

A properly invoked attorney-client privilege may be sufficient to overcome the presumption of public access to information which is contained in judicial records. See Siedle, 147 F.3d at 9-10. In addition "privacy rights of participants and third parties are among those interests which, in appropriate cases, can limit the presumptive right of access to judicial records." Standard Fin. Mgmt. Corp., 830 F.2d at 411 (citations omitted); see also Kravetz, 706 F.3d at 61-4. "[W]here the public's right of access competes with privacy rights, it is proper for the district court, after weighing the competing interests, to edit and redact a judicial document in order to allow access to appropriate portions of the document." Id. at 62.

The burden of proving that presumptively public judicial records should be sealed is on the party objecting to public disclosure. See Standard Fin. Mgmt. Corp., 830 F.2d at 411. As the First Circuit has noted, provisions of "the local rules of the United States District Court for the District of Massachusetts [] require a party seeking to seal documents to file a motion with the district court 'each time a document or group of documents is to be filed,' D. Mass. R. 7.2(e), and to accompany such motion with 'a memorandum of reasons, including citation of supporting authorities' as well as '[a]ffidavits and other documents setting forth or evidencing facts on which the motion is based,' id. at 7.1(B)(1)." Kravetz, 706 F.3d at 59. The court is, therefore,

ordering that the Lawyers file affidavits and memoranda in support of any motions for redactions, with copies of the documents that include the proposed redactions. If attorney-client privilege, or any other privilege, is asserted, the documents and/or information at issue shall be identified and addressed with specificity. Proposed redactions concerning categories of information may be addressed more generally.

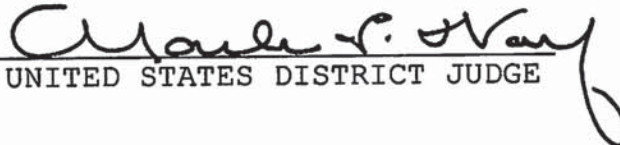
In view of the foregoing, it is hereby ORDERED that:

1. The Lawyers shall obtain forthwith from Elizabeth McEvoy, Esq., counsel for the Master, electronic versions of Executive Summary, the Report and Recommendation, and the exhibits referenced in them.

2. The Lawyers shall, by May 31, 2018, file, under seal, any motion for redactions, with documents reflecting the proposed redactions, and supporting affidavits and memoranda in the manner described in this Memorandum. Copies of these submissions shall be served on the Master. Redacted versions of these submissions shall be filed for the public record.

3. After the court decides which, if any, redactions are appropriate, it will provide the Lawyers an opportunity to propose redactions to the rest of the record that are consistent with the court's rulings.

4. Any objections to the Report and Recommendation, or any requests to adopt or modify it, shall be filed no later than seven days after the court rules on the proposed redactions.<sup>2</sup>

  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> As permitted by Federal Rule of Civil Procedure 53(f)(2), this Order provides the Lawyers more than the 21 days following the receipt of the Master's Report and Recommendation to object, or move to adopt or modify, provided by the Rule.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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

v. )

STATE STREET BANK AND TRUST COMPANY, )  
Defendants. )

C.A. No. 11-10230-MLW

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

v. )

STATE STREET BANK AND TRUST COMPANY, )  
Defendants. )

C.A. No. 11-12049-MLW

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

v. )

STATE STREET BANK AND TRUST COMPANY, )  
Defendants. )

C.A. No. 12-11698-MLW

MEMORANDUM AND ORDER

WOLF, D.J.

May 17, 2018

The court has received "Customer Class Counsel's"<sup>1</sup> Motion for Clarification (the "Motion") (Docket No. 222). The Motion indicates that it was not discussed before filing with counsel for the "ERISA Class,"<sup>2</sup> defendant State Street Bank and Trust's counsel, or counsel for the Master. It is, therefore, hereby ORDERED that:

1. Customer Class Counsel shall confer concerning the Motion with all other counsel, including counsel for the Master, and report, by May 24, 2018, jointly if possible but separately if necessary, their respective views on the Motion.

2. All counsel shall also discuss and include in their report(s) their respective views concerning which motions, if any, should be subject to the pre-filing conference requirement of Local Rule 7.1(a)(2).

  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> "Customer Class Counsel" are: Labaton Sucharow, LLP; Thornton Law Firm; and Lief, Cabraser, Heimann, and Bernstein, LLP.

<sup>2</sup> Counsel for the ERISA Class are: Keller Rohrback, LLP; Zuckerman Spaeder, LLP; and McTigue Law, LLP.

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

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No. 11-cv-10230 MLW

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

Plaintiff,

v.

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

Defendants.

---

No. 11-cv-12049 MLW

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

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

---

No. 12-cv-11698 MLW

**CUSTOMER CLASS COUNSELS' EMERGENCY OBJECTION TO  
ORDER THAT SEALED REPORT AND RECOMMENDATION AND  
RELATED DOCUMENTS BE PROVIDED IN UNREDACTED FORM TO  
STATE STREET**



Labaton Sucharow LLP (“Labaton”), Lief Cabraser Heimann & Bernstein LLP (“Lief”), and the Thornton Law Firm (“Thornton”) (collectively, “Customer Class Counsel”), respectfully object on an emergency basis to the Order of this Court (the “State Street Order,” ECF No. 225) entered this morning at approximately 10:37 AM, which directs counsel for the Special Master to provide a copy of the Master’s Report and Recommendation, Executive Summary, and exhibits referenced therein, to Defendant State Street Bank and Trust Company (“State Street”). As grounds for this emergency objection, Customer Class Counsel state as follows:

1. On March 14, 2018, the Special Master filed under seal his Report and Recommendation in this matter, as well as an Executive Summary, and referenced exhibits. In total these materials constitute approximately 10,000 pages, including 62 complete deposition transcripts (which are in minuscule form, and thus contain four transcript pages on each page).

2. The voluminous Report and Recommendation and related materials contain, among other things, documents and deposition testimony that is protected from disclosure by the attorney-client privilege and the work product doctrine, and information that is highly confidential.

3. The parties produced the materials and provided the testimony to the Special Master that is quoted or attached in his Report and Recommendation pursuant to a Limited Protective Order of the Special Master Relating to Attorney/Client Privileged and Work Product Documents and Information Being Provided to the Special Master (the “Limited Protective Order,” ECF No. 191). The Limited Protective Order provides that, in order to permit full and expeditious proceedings before the Special Master, the production of documents to the Special Master would not constitute a waiver of the attorney/client privilege, the work product doctrine,

or any other privilege or protection. *Id.* ¶ 1. The order also provides that deposition testimony would remain private, and would not be filed in Court until the parties have the opportunity to request the filing of the transcripts or other portions of the record under seal, and such requests have been adjudicated. *Id.* ¶ 4.

4. On October 24, 2017, the Court modified the procedure set forth in the Limited Protective Order by ordering that the Special Master shall file his Report and Recommendation and related materials under seal, after which the parties will have the opportunity to propose redactions before the materials are made public. ECF No. 208 at 3.

5. On May 16, 2018, the Court set the schedule for the parties to propose redactions to the Special Master's Report and Recommendation, Exhibits, and Executive Summary. The deadline for the parties to make such proposals is Thursday, May 31.

6. This morning, the Court issued the State Street Order. The State Street Order requires counsel to the Special Master to provide an un-redacted copy of the Report and Recommendation, Exhibits, and Executive Summary to State Street, so that State Street can also review the materials and propose redactions by Thursday, May 31.

7. Neither State Street nor its counsel is referenced or, it appears, covered by the Limited Protective Order. Rather, the Limited Protective Order was issued at the request of Plaintiffs' Counsel, who then participated in the proceedings before the Special Master by (among other things) producing documents, providing deposition testimony, and providing argument regarding those materials. State Street did not participate in those proceedings, through counsel or otherwise.

8. Customer Class Counsel thus object to the State Street Order inasmuch as it requires that the approximately 10,000 pages currently filed under seal, which contain privileged

and confidential materials of the Plaintiffs, be provided for the first time to Plaintiffs' adversary, State Street. Neither the Plaintiffs nor their counsel have waived the privileges or protections that they have with respect to these documents or this testimony, nor can they waive privilege belonging to their clients. Accordingly, State Street should only be permitted to review the Report and Recommendation, Executive Summary, and exhibits *after* Plaintiffs have applied the redactions that they will ask the Court to make pursuant to the process that the Court has outlined, whereafter State Street's counsel will require adequate time to perform its own privilege review to ensure that their client's privilege is protected.

WHEREFORE, Customer Class Counsel object on an emergency basis to the State Street Order and request that the Court modify the Order to provide that State Street may only view the Report and Recommendation, Executive Summary, and exhibits after Customer Class Counsel have redacted same, and that Customer Class Counsel and State Street's counsel be permitted to agree on a schedule that allows the existing May 31 deadline to be met, or permits them to request jointly any necessary adjustment to that deadline.

**Rule 7.1 Certification**

Undersigned counsel consulted with counsel for State Street, and they do not oppose this request.

Dated: May 17, 2018

Respectfully submitted,

By: /s/ Joan A. Lukey

Joan A. Lukey (BBO No. 307340)  
Justin J. Wolosz (BBO No. 643543)  
Stuart M. Glass (BBO No. 641466)  
CHOATE, HALL & STEWART LLP  
Two International Place  
Boston, MA 02110  
Tel.: (617) 248-5000  
Fax: (617) 248-4000

*Counsel for Labaton Sucharow LLP*

By: /s/ Richard M. Heimann

Richard M. Heimann (*pro hac vice*)  
Lieff Cabraser Heimann & Bernstein, LLP  
275 Battery Street, 29th Floor  
San Francisco, CA 94111  
Tel: (415) 956-1000  
Fax: (415) 956-1008  
rheimann@lchb.com

*Attorney for Lieff Cabraser Heimann & Bernstein, LLP*

By: /s/ Brian T. Kelly

Brian T. Kelly, Esq. (BBO No. 549566)  
Nixon Peabody LLP  
100 Summer Street  
Boston, MA 02110  
Tel.: (617) 345-1000  
Fax: (617) 345-1300  
bkelly@nixonpeabody.com

*Counsel for The Thornton Law Firm LLP*

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to all counsel of record on May 17, 2018.

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

Joan A. Lukey

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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

Plaintiff,

v.

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Defendant.

No. 11-cv-10230 MLW

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**CUSTOMER CLASS COUNSELS' EMERGENCY OBJECTION TO  
ORDER THAT SEALED REPORT AND RECOMMENDATION AND  
RELATED DOCUMENTS BE PROVIDED IN UNREDACTED FORM TO  
STATE STREET**

*In view of the Motion, the May 17, 2018 Order concerning State Street's hearing by ACATED, at least temporarily. As the court may not be fully informed of relevant representations made by the Master to State Street, among others,*

*it is hereby ordered that counsel for the parties and for the Master shall attend, by May 24, 2018, report their respective views on the process prepared in this Motion and how to address any concerns concerning confidentiality of information to State Street submitted through its counsel may have. W.V.D.F. May 17, 2018*