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 MOTION FOR CLARIFICATION

On May 31, 2018, the Court ordered counsel for the plaintiffs and State Street to file their proposed redactions to the Report and Recommendations, the exhibits, and the Executive Summary by June 11, 2018, to which the Special Master was ordered to respond by June 18, 2018. Due to the large number of redactions proposed, each of which required individual analysis and consideration, the Special Master requested additional time to respond to the entirety, including the proposed redactions to the exhibits. Dkt. # 296. On June 14, 2018, the Court issued a sealed order [Dkt. # 299] allowing, in part, the Master's request, and granting him until June 21, 2018 to respond to the proposed redactions to the exhibits.

On June 21, 2018, the Special Master filed his responses to the propose redactions to the First Set of Exhibits to the Report and Recommendations.[1] The following day, June 22, 2018, the Special Master filed his responses to the proposed redactions to the Second Set of Exhibits.[2] To date, the Special Master's responses to the proposed redactions to the remaining exhibits have not yet been filed with the Court or served on the parties.

On June 28, 2018, the Court issued a Memorandum and Order [Dkt.# 356] directing the Special Master to file redacted versions of the exhibits to the Report and Recommendations ("Final Redacted Exhibits") by July 10, 2018. Per the Court's Order, the redacted exhibits shall include each of the redactions proposed by the parties in their consolidated filing made on June 13, 2018 [Dkt. # 297] that the Court has not ordered be made public and/or that the parties have not agreed to make public. The parties were ordered to meet and confer about the substance of the Final Redacted Exhibits prior to the Special Master filing them with the Court on July 10.

[1] This filing addressed proposed redactions to Exhibits 4, 11, 12, 16-21, 25, 26, 35, 237-241, 252, 253, 260.

[2] This filing addressed proposed redactions to Exhibits 2, 28, 32, 33, 34, 37, 38, 41, 42, 105, 118, 120, 121, 122, 123, 127, 130, 131, 132, 133, 134, 135, 203.

In the June 28, 2018 Order, the Court ruled on several categories of proposed redactions to which the Special Master had objected, first arising in the Report and Recommendations. Dkt. # 356, p. 33. In light of these rulings, and the Court's latest instruction ordering the Special Master to file the Final Redacted Exhibits in conformance with the Court's Memorandum and Order, the Special Master seeks the Court's guidance as to whether it still wishes the Special Master to file formal responses to the proposed redactions to the remaining exhibits.[3] The Special Master has conferred with liaison counsel, and has agreed to provide the firms guidance concerning the Special Master's position as to the remaining objections and the reasons therefor. The Special Master believes that it will be most efficient to direct his efforts toward working collaboratively with the parties to review, and then confer about any remaining areas of disagreement as to the scope of material that should be redacted, and thereupon submit Final Redacted Exhibits by July 10, 2018. The Special Master is prepared, however, to file formal objections if the Court instructs him to do so.

Dated: June 29, 2018

Respectfully submitted,

SPECIAL MASTER HONORABLE GERALD E. ROSEN (RETIRED),

By his attorneys,

/s/ William F. Sinnott

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[3] Per the Court's order, the Special Master must file his unredacted responses under seal, as well as redacted versions of those responses.

CERTIFICATE OF SERVICE

I hereby certify that this Notice of Appearance was filed electronically on June 29, 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, 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, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 12-cv-11698 MLW

RESPONSE AND OBJECTIONS OF LIEFF CABRASER HEIMANN & BERNSTEIN, LLP TO THE SPECIAL MASTER'S REPORT AND RECOMMENDATIONS

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Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser") respectfully submits this Response and Objections to the Special Master's Report and Recommendations ("Report"), and Executive Summary thereof ("Executive Summary"), dated May 16, 2018.[1]

I. INTRODUCTION

In his Report and Executive Summary, the Special Master Honorable Gerald E. Rosen (Ret.) (the "Special Master"), makes the following findings and conclusions with which Lieff Cabraser concurs:

- The Special Master acknowledges the risks, difficulties and challenges of the State Street Action, the skill and dedication of plaintiffs' counsel, including Lieff Cabraser, and the outstanding accomplishment of the $300 million settlement in the captioned action (the "State Street Action");
- The Special Master finds the roughly 25% fee awarded to plaintiffs' counsel was appropriate based solely on the work performed and the result achieved;
- The Special Master concludes that the hourly rates for, and the number of hours worked by, Lieff Cabraser's attorneys, including its staff attorneys (whose work the Master compared favorably to junior to mid-level associates), were reasonable;[2]
- The Special Master finds the contemporaneous time records of Lieff Cabraser's attorneys, including its 18 staff attorneys, to be sufficiently and reliably detailed;
- The Special Master concludes that Lieff Cabraser's role in the double-counting of any lodestar for staff attorneys was "inadvertent," and as between the three Customer Class Counsel, Lieff Cabraser bears the least responsibility for that error;

[1] All references herein to the Report, or the Executive Summary, are to ECF No. 357 and 357-1.

[2] Lieff Cabraser uses the term "staff attorneys" to refer to those licensed attorneys with relevant experience who work for the firm conducting document review, coding, and analysis, and who write related issue and/or witness memoranda (as necessary), in the many of the firm's large, complex cases. Their specific tasks generally, and in the State Street Action specifically, are described in detail herein. The term "staff attorneys" includes personnel paid directly by the firm and lawyers paid by an outside agency (which in turn bills the firm for those lawyers' services).

- The Special Master finds that Lieff Cabraser was not aware of the origins or details of the relationship between lead counsel, Labaton Sucharow ("Labaton"), and attorney Damon Chargois, and justifiably believed Chargois to be "local counsel" for Labaton and the named plaintiff, and therefore bears no responsibility for Chargois' involvement (or lack thereof) in the State Street Action; and,

- The Special Master concludes that Lieff Cabraser should be "relieved of its obligations to Labaton under the claw-back letter as to Chargois."

Lieff Cabraser objects, however, to the following of the Special Master's findings, conclusions, and recommendations:

- The Special Master recommends that Lieff Cabraser "disgorge" one-third of the aggregate amount of inadvertently double-counted staff attorney lodestar, and that this money be "returned" to the class;

- The Special Master recommends that the time of Lieff Cabraser's seven staff attorneys who were paid, at least in part, by an agency (which in turn billed Lieff Cabraser) be treated as a cost, instead of including that time in the firm's lodestar;

- The Special Master recommends that Lieff Cabraser "disgorge" the difference between: (a) the total of the firm's "agency" attorneys' lodestar, multiplied by 1.8; and, (b) $50 per hour for the agency lawyers' time; and,

- The Special Master concludes that even after the "imposition of the monetary remedies recommended here" Lieff Cabraser "will still be left with not only their base lodestar claim, but a substantial multiplier."

Based on the required *de novo* review of the factual record and controlling case law, for the reasons summarized below, the Court should sustain Lieff Cabraser's objections and grant the relief it seeks.

Lieff Cabraser should not be required to disgorge any portion of the firm's inadvertently double-counted lodestar. The Special Master recommends that Labaton, Thornton Law Firm ("Thornton"), and Lieff Cabraser (together "Customer Class Counsel"), disgorge and "return" to the class the $4,058,000 in double-counted staff attorney time. Lieff Cabraser objects to this recommendation by the Special Master, and urges the Court to reject it, for the following reasons: (1) the double-counting of lodestar (which, in the case of Lieff Cabraser, concerned only

four staff attorneys for two-three months) was found by the Master to be "inadvertent"; (2) the Special Master's recommendation is contrary to controlling law in that it miscomprehends or ignores the limited "cross-check" purpose for which lodestar was submitted and used in the State Street Action; (3) the inadvertent double-counting caused no harm to the class; and, (4) Customer Class Counsel, including Lieff Cabraser, have already been penalized for the accidental double-counting. Contrary to the Special Master's recommendation, the proper way to address the double-counting issue is simply to remove the double-counted lodestar from the aggregate lodestar used in the cross-check of the 25% fee award, and then determine whether the resulting aggregate multiplier of 2.0 (and Lieff Cabraser's resulting individual multiplier of 1.69) is appropriate. Lieff Cabraser submits that it is.

In the event the Court requires Lieff Cabraser to disgorge any portion of the firm's double-counted lodestar, that disgorgement should be commensurate with the firm's "relative" role in the double-counting. In the event the Court overrules Lieff Cabraser's objection to the imposition of any "remedy" for the double-counting, the firm objects to the Special Master's recommendation that the appropriate result is "disgorgement by all three firms in equal amounts" of the $4,058,000 in inadvertently double-counted time (i.e., $1,352,667 each). Lieff Cabraser objects to this recommendation because such an outcome is inconsistent with the factual record and the Special Master's own substantive findings. Based on the firm's limited fee interest in the State Street Action (24% among Customer Class Counsel and 20.3% among all plaintiffs' counsel), the actual amount of the lodestar the firm inadvertently double-counted ($868,417), the relatively small percentage of the total double-counted amount that can be attributed to Lieff Cabraser (21%), and given the Special Master's findings that the firm was least responsible for failing to catch and correct the inadvertent double-counting, if the Court requires any

disgorgement (an outcome not supported by the law or the facts), the firm should be obliged to pay significantly less than an "equal share" of the total double-counted lodestar (i.e., not 33 1/3%).

Lieff Cabraser should not retroactively be required to treat the firm's staff attorneys paid by an agency as a "cost" instead of including them as part of the aggregate lodestar for cross-check purposes. The Special Master recommends that the time of Lieff Cabraser's seven staff attorneys who were paid, at least in part, by an agency be treated as a cost, and not as a component of lodestar for cross-check purposes. Lieff Cabraser objects to this recommendation on the following grounds: (1) the controlling and relevant case law, including from within the First Circuit, expressly *rejects* the Special Master's recommendation that the time of the firm's agency lawyers be treated as a cost; and (2) the purported "factual" distinctions the Special Master attempts to draw between the firm's staff attorneys on payroll and those paid by an agency are either insignificant or not supported by a fair reading of the record. No matter what the Special Master's academic views on best practices may be with respect to the treatment of agency (contract) attorneys in the context of class action fee applications, those views should not displace the controlling law or the relevant facts.

Even if the Court agrees that the firm's agency lawyers should be treated differently than the staff attorneys on firm payroll for purposes of the lodestar cross-check, the Special Master's recommended disgorgement remedy should be rejected. The Special Master recommends that Lieff Cabraser "disgorge" and "return" to the class the difference between: (a) the total of the firm's agency attorneys' lodestar, multiplied by 1.8, and (b) $50 per hour for the

agency lawyers' time ($2,241,098.40)[3]. Lieff Cabraser objects to this recommendation by the Special Master for the following reasons: (1) the Special Master's recommendation is contrary to controlling law in that it miscomprehends or ignores the limited "cross-check" purpose for which lodestar was submitted and used in the State Street Action; (2) the inclusion of Lieff Cabraser's agency lawyers in the cross-check caused no harm to the class; and (3) penalizing Lieff Cabraser for adhering to controlling legal principles and having committed no violation of law or ethics is blatantly unjust. In the event the Court agrees to treat the time of the firm's agency attorneys as a cost, the proper way to address the matter would be to remove those attorneys' lodestar (along with the double-counted lodestar) from the aggregate lodestar used in the cross-check of the 25% fee award, and then determine whether the resulting aggregate multiplier of 2.07 (and resulting individual multiplier of 1.99 for Lieff Cabraser) is appropriate. Lieff Cabraser submits that it is.

Lieff Cabraser should be reimbursed for the amount of money it has spent responding to the Chargois investigation. The Special Master finds that Lieff Cabraser has no responsibility for Chargois' involvement (or lack thereof) in the State Street Action. The Special Master also concludes that the firm should be relieved of any obligation to contribute to the $4.1 million the Master recommends Labaton disgorge as a "remedy" for the "non-disclosure" of the Chargois payment. When invited by the Special Master near the close of his investigation, the firm declined to seek reimbursement from Labaton and/or Thornton of the approximately $1 million the firm effectively contributed toward Chargois' $4.1 million fee. Lieff Cabraser will abide by that position now. However, the firm does seek reimbursement from Labaton and/or Thornton of the amount Lieff Cabraser has spent responding to the Chargois investigation, an exercise for

[3] For this calculation, the firm is using the correct total hours worked by agency (contract) lawyers, based on Lieff Cabraser's time records, of 2899.2. The Special Master uses different hour totals (i.e., 2949.5 or 2833.5) for these attorneys at various places in his Executive Summary and Report. *See, e.g.,* Executive Summary at 50, Report at 367.

which the firm was not responsible. The firm seeks repayment of the amount it has contributed to the Special Master's fees and expenses that are attributable to the Chargois investigation, as well as the amount of costs and lodestar expended by the firm in addressing the Special Master's Chargois-related inquiries.

Contrary to the Special Master's "calculations," after the imposition of the recommended monetary "remedies" against Lieff Cabraser, along with the costs of the investigation already incurred by the firm, the firm will not receive its "base lodestar" plus a "substantial multiplier." Far from it. Having found that Lieff Cabraser engaged in no intentional or professional misconduct and violated no rule of law or ethics, the Special Master seeks to justify (or rationalize) the "imposition of the monetary remedies recommended here," by incorrectly claiming that "even after the allocation of all monetary amounts, and the cost of the investigation, [Lieff Cabraser] will still receive its base lodestar plus a significant multiplier." To be clear, the Special Master recommends that the firm disgorge $3,593,765 – or roughly 24% of the $15,116,965.50 in fees Lieff Cabraser actually received – *in addition* to (a) the $912,000 the firm has already spent to fund its share of the Special Master's investigation, and (b) the $2.39 million the firm has spent in time and costs since February 6, 2017 responding to the investigation, a combined $3.3 million. Altogether, this would mean a total reduction in Lieff Cabraser's fee of $6,897,590. Contrary to the Special Master's arithmetic, "after the allocation of all monetary amounts, and the cost of the investigation," Lieff Cabraser would receive *less* than its "base lodestar" and, in fact, a *negative* individual multiplier (0.92) for its exemplary service to the class in the State Street Action.

The financial impact on Lieff Cabraser of the Special Master's disgorgement recommendations is unjust and entirely disproportionate to the firm's conduct and the

absence of harm to the class. The Special Master claims 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." Yet, with respect to Lieff Cabraser, the Special Master does not "identify" *any* "true and unmistakable professional misconduct," concludes that the firm bears the least responsibility for the inadvertent double-counting error, and finds that it contributed to a laudable result for the class with stellar work by the firm's attorneys (including its staff attorneys).

Despite these findings, and without support of any controlling or relevant case law, the Special Master's recommendations would impose the harshest financial penalty on Lieff Cabraser (as a percentage of individual fees paid) of any firm in these proceedings. The financial impact that would be inflicted on Lieff Cabraser by the Special Master's disgorgement recommendations is entirely disproportionate to the firm's role in the events giving rise to this investigation and the absence of harm suffered by the class.

Lieff Cabraser submits that the firm has already been excessively penalized for inadvertently double-counting $868,417 in lodestar for four staff attorneys (for two to three months' work) by paying 24% ($912,000) of the Special Master's $3.8 million investigation (to date), plus $2.39 million in time and costs spent responding to the investigation. This aggregate expense of $3.3 million is wildly disproportionate to the firm's double-counting mistake and the wholly appropriate manner in which it included its agency attorneys in the firm's submission of lodestar for cross-check purposes.

The essential facts concerning Lieff Cabraser's inadvertent double-counting of the lodestar of just four staff attorneys for a limited time-frame, and the propriety of the number of hours and the hourly rates of the firm's attorneys, including its 18 staff attorneys, who worked on

the State Street Action, were communicated to the Special Master within the first month of his appointment. Nevertheless, the firm was obliged to respond to the same inquiries about these topics (and other topics that were mostly irrelevant to the investigation) through the production of thousands of pages of documents, responses to dozens of interrogatories and other written submissions, and in numerous depositions attended by the Special Master and as many as four other members of his team. All of this time and effort was devoted to questions that were simple and uncomplicated, the answers to which did not change from the firm's first engagement with the Special Master in April 2017 through the filing of the Master's Report more than 11 months later in May 2018.

Moreover, the costs incurred by the firm were and continue to be occasioned by dramatic changes in the scope of the Special Master's investigation. As the Special Master finds, Lieff Cabraser has no responsibility for Chargois' involvement (or lack thereof) in the State Street Action. Nevertheless, the firm was required to respond to multiple, duplicative discovery requests, appear for two depositions, and submit expert testimony, all to repeat the same basic facts – that the firm agreed to pay its share (24%) for the services of an attorney the firm believed to be Labaton's local counsel in Arkansas; that the firm was told and understood that this lawyer, Chargois, had performed valuable services for Labaton and its client; that based on the firm's experience, there was nothing unusual in such a local counsel arrangement for a public pension fund in a financial fraud case; and, that the firm knew nothing about the origins or the actual details of the relationship between Labaton and Chargois.

Finally, the Special Master states in his Report that the "intent" of the investigation was, among other things, to "put the law firms and the class roughly in a position that is proportionate to the conduct and the harm." The Master sums up his efforts by touting the possible "return" of

"between $7.4 and $8.1 million to the class." But, there is no factual, legal or policy basis for the firm to be required to "return" approximately one quarter of its well-earned fees to the class. Indeed, it would appear the Special Master does not entirely believe that it was the "intent" of his investigation to "put the law firms and the class roughly in a position that is proportionate to the conduct and the harm," as the Master recommends that $3.4 million of the $4.1 million paid to Chargois should now be redirected to counsel for ERISA plaintiffs and not "returned" to the class. In any event, the firm has now expended additional resources to address the Special Master's recommended "remedies" against Lieff Cabraser. The firm should have to pay no more.

II. STATEMENT OF FACTS

A. Lieff Cabraser's Relevant Business Practices, Including How the Firm Manages Complex Litigation, Uses Staff Attorneys, and Sets Hourly Rates.

1. Lieff Cabraser's Complex Litigation Practice Involves Large Scale Document Review and Analysis.

Lieff Cabraser is a plaintiff-side litigation firm founded in 1972, based in San Francisco, with additional offices in New York, Nashville, and Seattle.[4] More than 100 attorneys, including partners, associates, and staff attorneys currently work for the firm.[5] Lieff Cabraser engages in predominantly contingent fee practice for plaintiff classes, groups and individuals, on behalf of public and private institutional investors, small business, shareholders, consumers and

[4] *See* April 5, 2017 Presentation to the Special Master, LCHB 0000001 - 0067, attached as Exhibit ("Ex.") A to the Declaration of Steven E. Fineman in Support of the Response and Objections of Lieff Cabraser Heimann & Bernstein, LLLP to the Special Master's Report and Recommendations ("Fineman Declaration"), filed herewith. *See also* Lieff Cabraser resume, LCHB 0049987 – 50109, earlier filed as ECF No. 104-17 (Ex. C). Documents and pleadings produced or provided to the Special Master by Lieff Cabraser in this proceeding that are referenced herein, but are not exhibits to the Master's Report or are not already in the public docket, are attached to the Fineman Declaration. *See also* Fineman Declaration at ¶ 19.

[5] Ex. A to Fineman Declaration at 4; ECF No. 104-17 (Ex. C); Ex. 57 to Report at 2-3; Fineman Declaration at 19.

employees.[6] The firm also occasionally represents plaintiffs on an hourly basis.[7] Lieff Cabraser is "considered by many to be one of the preeminent plaintiffs' class action firms in the nation."[8]

Lieff Cabraser has litigated and resolved hundreds of class action lawsuits and thousands of group and individual cases (many in the context of multi-district litigation ("MDL") proceedings), including in the fields of securities and financial fraud.[9] Most of the firm's cases involve major corporate defendants (e.g., banks and other financial institutions, pharmaceutical and medical device companies, oil and energy companies, technology corporations, and consumer product manufacturers).[10] These kinds of defendants are represented by the largest and most sophisticated law firms in the world.[11] Most of the firm's large, complex cases involve production by defendants of enormous numbers of pages of documents (frequently in the millions).[12]

Lieff Cabraser staffs its complex cases to maximize effectiveness and efficiency in light of the defendants' typically significant advantage in economic and personnel resources.[13] The firm's complex cases are normally supervised by a senior partner, and staffed with an additional senior partner and one or more junior partners, and the appropriate number of associates, staff attorneys and litigation support personnel (e.g., paralegals, financial analysts, investigators, and

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[6] *Id.*

[7] *Id.*; Ex. 175 to Report at 8.

[8] Report at 16.

[9] Ex. A to Fineman Declaration at 5; ECF No. 104-17 (Ex. C); Fineman Declaration at ¶ 20; Ex. 57 to Report at 2-3.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] Ex. A to Fineman Declaration at 6-7; Fineman Declaration at ¶ 21.

the like).[14] Investigations, pleadings, briefs, written discovery, depositions, court appearances, trial and settlement are handled by partners and associates depending on the level of experience required.[15] Document review, analysis, issue memoranda and witness kits (for deposition and trial) are conducted or prepared by a combination of junior partners, associates, and staff attorneys.[16]

2. Lieff Cabraser's General Use of Staff Attorneys.

As stated above, Lieff Cabraser, like most plaintiff-side litigation firms that handle large, complex cases, uses staff attorneys to support the firm's organization, reading, coding and analysis of the vast number of documents produced in these cases.[17] In addition, Lieff Cabraser staff attorneys support all aspects of the firm's complex cases by identifying documents and frequently drafting issue, witness, and liability memoranda.[18] The work product generated by the firm's staff attorneys is used, for example, in support of class certification, in preparation for the conduct of fact and expert depositions, in opposition to motions for summary judgment, for settlement negotiations, and in other pre-trial and trial proceedings.[19]

As described more fully below with respect to the staff attorneys who worked on the State Street Action, the firm's staff attorneys come from solid to excellent law schools, generally have years of experience in civil litigation and in document review and analysis in complex cases, and have made the lifestyle and career choice to work a more limited number of hours

[14] *Id*.
[15] *Id*.
[16] *Id.*
[17] *Id.*
[18] *Id*.
[19] Fineman Declaration at ¶ 22.

than do traditional law firm partners and associates.[20] Many of the firm's staff attorneys are paid directly by the firm and receive benefits provided by the firm.[21] Other firm staff attorneys work at the firm's direction, but are paid directly by agencies that bill the firm for those lawyers' services.[22]

During and since the State Street Action, Lieff Cabraser has employed as many as 30 staff attorneys at one time who are paid directly by the firm.[23] Given the number of large complex cases the firm handles at one time, Lieff Cabraser sometimes has need for attorney document review and analysis support beyond the firm's available staffing (for example, the firm may just need additional attorneys, or may require lawyers with specific subject experience or language expertise).[24] When such a need arises, the firm seeks and receives resumes from "preferred" agencies: preferred because those agencies have long-standing relationships with the firm and understand the lawyer qualifications and experience the firm requires.[25] Frequently, as was the case for four of the staff attorneys who worked on the State Street Action, staff attorneys who start working for the firm while paid by an agency transition to direct employment by the firm.[26]

Whether on Lieff Cabraser's payroll or paid via an agency, all firm staff attorneys have comparable educational backgrounds and work experiences, and all perform substantially the same document review and analysis functions.[27] And, all utilize, to varying degrees, the firm's

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[20] *Id.* at ¶ 23; Appendices A and B.
[21] *Id*.
[22] *Id*.
[23] Fineman Declaration at ¶ 24.
[24] *Id.*; Ex. 18 to Report at 31-32.
[25] Fineman Declaration at ¶ 24.
[26] *Id.*; Appendices A and B.
[27] *Id.*; Ex. 10 to Report at 113-116.

infrastructure and resources, including physical office space (for the majority working in firm offices instead of remotely); information technology support (both in the office and remotely); administrative support (e.g., human resources, accounting, and word processing); assistance from the firm's litigation support department; supervision from firm partners and senior associates; and the cost to the firm for the staff attorneys' services.[28]

3. Lieff Cabraser's Hourly Rates, Including for Staff Attorneys, Are Market Driven and Routinely Approved.

Although the firm is compensated predominantly on a contingent fee basis, Lieff Cabraser's attorneys and litigation staff maintain contemporaneous time records that identify specific tasks performed and the amount of time devoted to those tasks.[29] The firm's contemporaneously recorded time, when multiplied by applicable hourly rates, generates what is known as "lodestar."[30] In certain class actions handled by the firm, aggregate lodestar is used as a "cross-check" to assure that the firm's fee in a "percentage-of-the-recovery" context is appropriate (i.e., that the multiplier on the lodestar is not excessive).[31] In other class actions the firm is compensated based on its lodestar plus an appropriate multiplier.[32] The firm also uses its lodestar figures in cases for hourly rate paying clients.[33]

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[28] Fineman Declaration at ¶ 25; Ex. 18 to Report at 49.

[29] Fineman Declaration at ¶ 27; Exs. 206 and 247 to Report.

[30] Fineman Declaration at ¶ 27; Ex. A to Fineman Declaration at 60; Ex. 175 to Report at 8-9.

[31] *Id*

[32] *Id.*

[33] Both prior to and in the early stages of the Special Master's investigation, there was a question about whether Customer Class Counsel have bill-paying clients (in addition to contingent fee clients) who pay the firms' hourly rates. Lieff Cabraser has consistently and correctly reported to the Court and the Special Master that it periodically has bill-paying clients who pay the firm's hourly rates. *See* Fineman Declaration at ¶ 27; Ex. A to Fineman Declaration at 55-59; Ex. B to Fineman Declaration at 20-21; Ex. 89 to Report, ECF No. 104-17, at 3; Ex. 175 to Report at 7-10 and 16; ECF No. 176 at 92-93.

All Lieff Cabraser hourly rates, including those for staff attorneys (whether employed directly by the firm or through an agency) are set based on the firm's understanding of the appropriate market rates for a lawyer's services, primarily in the San Francisco and New York market places.[34] The firm's management evaluates and adjusts hourly rates on an annual basis, based on the firm's historical rates at the time, publically available fee applications during the preceding year, developments in the case law during the preceding year, fee awards and hourly rates paid to the firm during the preceding year, and publically available salary surveys. Consistent with our experience and the applicable law, the firm does not set hourly rates for any attorney, including staff attorneys (whether on the firm's payroll or employed through an agency), based on what the firm pays them (or for them).[35] Again, firm hourly rates are based on what is reasonable in the applicable market places for our services.[36]

For a number of years prior to 2016, hourly rates of the firm's staff attorneys were set to be consistent with the rates of "on-track" firm attorneys with the same or comparable levels of experience. However, as the firm's staff attorneys (payroll and agency) became increasingly experienced and senior, that approach began to result in rates the firm believed were too high.[37] Therefore, beginning in 2016, with limited exceptions, all firm staff attorneys were assigned an hourly rate of $415 per hour (then the equivalent of a fourth year "on-track" associate).[38] 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

[34] Fineman Declaration at ¶ 28; Ex. A to Fineman Declaration at 8-9; Ex. 175 to Report at 5-9; Ex. 18 to Report at 57-62.

[35] *Id*.

[36] *Id.*

[37] Fineman Declaration at ¶ 29; Ex. A to Fineman Declaration at 8-9; Ex. 176 to Report at 5-9.

[38] *Id*.; *see also* Appendices A and B.

memoranda in the kind of large complex cases handled by Lieff Cabraser. The firm determined this to be a fair and appropriate rate, even though Lieff Cabraser's staff attorneys, by and large, have many more than four years of relevant experience.[39]

The vast majority of fee awards in the firm's class action cases over the years have been awarded on a percentage of the recovery basis.[40] In recent years, however, courts have increasingly conducted a lodestar cross-check to determine that the percentage of the recovery award is not excessive.[41] And, in rare cases, courts have determined our class action fees on a lodestar basis.[42] In both the lodestar cross-check and lodestar fee award context, Lieff Cabraser's hourly rates, including the firm's staff attorney rates, have routinely been approved.[43] In addition, in those infrequent instances when Lieff Cabraser has represented plaintiffs on an hourly basis, the firm has been paid the applicable hourly rates for its attorneys, including its staff attorneys.[44]

B. The Background of Lieff Cabraser's Involvement in the State Street Action.

1. Lieff Cabraser's Role in the California *Qui Tam* Action.

Lieff Cabraser began investigating and pursuing claims of alleged deceptive practices and overcharges by State Street related to foreign currency exchange ("FX") products and services in 2008.[45] Along with Thornton, Lieff Cabraser was co-counsel of record in a *qui tam* FX lawsuit filed against State Street under seal in California on April 14, 2008 (the "California Action").[46]

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[39] *Id*.
[40] Ex. A to Fineman Declaration at 60; Ex. 175 to Report at 8.
[41] *Id.*
[42] *Id.*
[43] Ex. A to Fineman Declaration 61-67; Ex. 175 to Report at 9, 16-18; Ex. 18 to Report at 62.
[44] *See* note 33, *supra*.
[45] Ex. A to Fineman Declaration at 10; Ex. 57 to Report at 3-4.
[46] *Id*.

The California Attorney General intervened in the California Action in October 2009, making the FX scheme public.[47] The attendant publicity caused a number of custodial clients to question whether they had been overcharged on FX trades in a similar manner. The questions were not restricted to State Street; BNY Mellon faced similar allegations in *qui tam* lawsuits that were unsealed in early 2011.[48]

2. Lieff Cabraser's Role in the BNY Mellon Action.

In July 2011, Lieff Cabraser filed, with co-counsel (including Thornton), a class action suit against BNY Mellon in the United States District Court for the Northern District of California on behalf of custodial customers of BNY Mellon who were wrongly overcharged on FX trades (the "BNY Mellon Action"). That complaint was subsequently amended and BNY Mellon's motion to dismiss was denied in February 2012. The case was put on an aggressive schedule by Judge William Alsup, resulting in the plaintiff filing its opening brief on class certification in April 2012.[49]

Shortly after the plaintiff filed its class certification motion, however, in April 2012, the case was transferred to Judge Lewis A. Kaplan of the Southern District of New York and consolidated with several other customer, ERISA, and securities fraud cases all alleging the same underlying facts about BNY Mellon's custodial FX practices. These cases (now part of an MDL) were in turn coordinated for discovery purposes with a later-filed civil suits brought by the United States Department of Justice ("DOJ") and the New York State Attorney General ("NYAG").[50]

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[47] Ex. A to Fineman Declaration at 10; Ex. 57 to Report at 4.

[48] Ex. 57 to Report at 4.

[49] *Id*.

[50] Ex. 57 to Report at 4-5; Ex. 10 to Report at 24-26.

Once before Judge Kaplan, Lieff Cabraser was appointed co-lead counsel for the proposed class of custodial customers affected by the BNY Mellon FX scheme. In addition, the firm was appointed to the three-member executive committee overseeing all plaintiffs in the MDL.[51] Between 2012 and early 2015, BNY Mellon aggressively defended the actions, taking 57 depositions of the plaintiffs, absent class members, or third parties, and filing counterclaims against the named customer plaintiffs and absent class members.[52] The plaintiffs in the MDL and the DOJ took more than 50 depositions of BNY Mellon.[53] BNY Mellon produced more than 29 million pages of documents.[54]

Lieff Cabraser, working closely with its co-counsel and the DOJ, reviewed and analyzed these documents with the aid of 13 Lieff Cabraser staff attorneys (including six "agency" lawyers), most of whom later went on to work on the State Street Action.[55] In addition to reviewing, analyzing and coding documents, Lieff Cabraser's staff attorneys, who individually averaged nearly 2,200 hours on the BNY Mellon Action, prepared highly detailed witness kits and issue memoranda to assist the lead attorneys in preparing for depositions.[56]

In January 2015, fact discovery closed in the BNY Mellon action and settlement discussions began, which resulted in a global resolution in March 2015. The settlement, approved by Judge Kaplan in September 2015, provided $504 million for the benefit of BNY Mellon customers, with $335 million attributed to resolution of the customer class case co-lead

[51] *Id*.
[52] Ex. 57 to Report at 5.
[53] *Id*.
[54] *Id.*
[55] Ex. A to Fineman Declaration at 18-20; Ex. 57 to Report at 15; Appendices A and B.
[56] *Id.*

by Lieff Cabraser (the settlement also resolved claims by the DOJ and NYAG, and the United States Department of Labor).[57]

3. Lieff Cabraser's Inclusion in the State Street Action.

During its involvement in the California Action and throughout its early work on the BNY Mellon Action, Lieff Cabraser investigated possible claims to be brought on a class basis for the benefit of custodial customers of State Street.[58] In that regard, the firm discussed with several institutional investors the possibility that they would serve as class representatives in a customer class action against State Street. The firm however, was not retained by any State Street client for that purpose.[59]

As noted above, Lieff Cabraser worked with Thornton on the California and the BNY Mellon Actions. Based on Lieff Cabraser's prior working relationship with Thornton and the firm's expertise and institutional knowledge concerning custodial FX pricing practices, the firm was invited to participate in the State Street Action by Thornton and Labaton, after Labaton's client, the Arkansas Teacher Retirement System ("ATRS"), decided to proceed with the filing of a class action against State Street in the District of Massachusetts.[60]

Throughout the State Street Action, Labaton served as lead counsel for ATRS and the putative and settlement class; Thornton served as liaison counsel for ATRS and the putative and settlement class; and, Lieff Cabraser served as "additional counsel" for ATRS and the putative and settlement class.[61] Lieff Cabraser had no formal attorney client relationship with ATRS during the State Street Action, and has not represented ATRS before or after the State Street

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[57] Ex. A to Fineman Declaration at 12-13; Ex. B to Fineman Declaration at 7-8.

[58] Ex. 18 to Report at 9-10, 13; Ex. 19 to Report at 12-13.

[59] *Id.*

[60] Ex. A to Fineman Declaration at 11; Ex. 57 to Report at 7.

[61] ECF No. 28; Ex. 113 to Report, ECF No. 110, at ¶ 4.

Action. [62] Prior to and during the pendency of the State Street Action, Lieff Cabraser had no direct substantive communication with ATRS.[63]

During the course of the State Street Action, Labaton, Thornton and Lieff Cabraser asserted claims on behalf of all eligible custody clients of State Street (including plans eligible under the Employee Retirement Income Security Act of 1974 ("ERISA")), and were known, and are collectively referred to herein, as "Customer Class Counsel." Other attorneys ("ERISA Counsel") filed cases asserting strictly ERISA-based claims solely for the benefit of ERISA plan custody clients of State Street.[64] Customer Class Counsel and ERISA Counsel are collectively referred to herein as "Plaintiffs' Counsel."

C. The State Street Action

1. Plaintiffs' Underlying Allegations and Claims against State Street.

Lieff Cabraser assumes the Court's familiarity with State Street's allegedly unfair and deceptive practice of charging its custody and trust customers excessive rates and spreads in connection with certain FX transactions, in alleged violation of State Street's statutory, common law, contractual and fiduciary obligations.[65] Therefore, the firm does not restate here those allegations and claims. It does bear noting, however, that both this Court and the Special Master have acknowledged the complexity, difficulty and challenges of the State Street Action.[66]

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[62] Ex. 10 to Report at 45-47.

[63] Ex. 57 to Report at 7.

[64] Those attorneys include Keller Rohrback, LLP ("Keller Rohrback"), McTigue Law, LLP ("McTigue Law"), and Zuckerman Spaeder, LLP ("Zuckerman Spaeder") (collectively, "ERISA Counsel"). *See* Exs. 23, 24, and 29 to Report.

[65] Ex. 7 to Report, ECF No. 10.

[66] Ex. 78 to Report, ECF No. 114, at 19-20, 36, 38; Ex. 113 to Report, ECF No. 110, at 5; ECF No. 110 at 4; Executive Summary at 3; Report at 6, 29-33, 152-156. *See also* Ex. 57 to Report at 12-13 (risk factors identified by Lieff Cabraser at the outset of the State Street Action).

2. Procedural Litigation and Mediation History of the Litigation.

Lieff Cabraser assumes the Courts' knowledge of the procedural, litigation and mediation history of the State Street Action from its inception in February 2011 to the execution and filing of the final settlement agreement in July 2016. For the Court's reference, a detailed history of the litigation can be found in 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, etc., filed September 15, 2016 ("Omnibus Declaration").[67]

3. Lieff Cabraser's Specific Tasks in the State Street Action.

Lieff Cabraser worked closely from the outset of the State Street Action with Labaton and Thornton on, among other things: (a) researching potential causes of action against State Street for overcharging custodial customers on FX trades; (b) drafting both the complaint and amended complaint; (c) briefing plaintiff's opposition to defendants' motion to dismiss (with particular responsibility for (i) countering defendants' statutes of limitations arguments and (ii) supporting plaintiff's claims under M.G.L. ch. 93A); (d) researching and drafting memoranda on the viability of class certification (particularly as applied to M.G.L. ch. 93A); and, (e) drafting plaintiffs' final settlement approval memorandum.[68]

Lieff Cabraser was principally responsible for developing the M.G.L. ch. 93A theory of liability, which was particularly valuable since it allowed for double or treble damages (plus prejudgment interest), and (as directed against a Massachusetts-based company and conduct) provided a potentially more readily-certifiable class claim for State Street custodial customers

[67] Ex. 3 to Report, ECF No. 104, at ¶¶ 39-106. The Report refers to Sucharow's September 15, 2016 Declaration as the "Omnibus Declaration," and Lieff Cabraser therefore adopts that same definition here. Report at 54-55.

[68] Ex. A to Fineman Declaration at 11; Ex. 57 to Report at 8-9.

from across the country.[69] During the parties' numerous mediation sessions, Lieff Cabraser took the lead in researching and presenting on the viability of class certification under M.G.L. ch. 93A in particular, as well as the availability of double or treble damages and the elements and standards of proof necessary to achieve those results.[70] Lieff Cabraser attorneys attended and participated in every mediation session and in all related plaintiff-side meetings.[71]

In addition, Lieff Cabraser participated in the review and analysis of more than nine million pages of documents produced by State Street.[72] State Street's productions largely took place between December 2012 and November/December 2013.[73] The initial production (in December 2012) of more than 300 CDs and a hard drive consisted principally of materials gathered and produced by State Street in the California Action, and totaled more than 260,000 documents.[74] The latter productions (bringing the total number of documents to be reviewed in the database to more than 750,000 [including 84,000 native Excel files], and more than nine million pages or 500 gigabytes) included documents produced by State Street in *Hill v. State Street Corporation*, No. 09-cv-12146-GAO (D. Mass.) (a securities fraud lawsuit filed in the wake of the disclosure of the California Action which contained overlapping allegations of unfair or deceptive custodial FX pricing practices by State Street).[75]

The State Street productions contained, among other things, internal and external email correspondence, custodial contracts and fee schedules, marketing materials, internal compliance and training manuals, investment manager guides, internal and external presentations, analyst

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[69] Ex. 10 to Report at 15-19, 55-58, 68, 70-74.

[70] Ex. A to Fineman Declaration at 11; Ex. 10 to Report at 15-19, 55-58, 68, 70-74.

[71] *Id*.

[72] Ex. A to Fineman Declaration at 11; Ex. 57 to Report at 13-14.

[73] Ex. 57 to Report at 13-14.

[74] *Id.*

[75] *Id.*

reports, customer surveys, codes of conduct, competitive analyses, and FX revenue/profit and loss reports.[76] All of these documents and materials were uploaded to a Catalyst e-discovery database hosted and chiefly administered by Lieff Cabraser in the firm's San Francisco office.[77] As explained below, most of the review, reading and analysis of the documents produced by State Street were performed by staff attorneys working for Customer Class Counsel, including Lieff Cabraser.

D. The Role Of Lieff Cabraser's Staff Attorneys In The State Street Action.

1. The Training of and Work Performed By Lieff Cabraser's Staff Attorneys.

As explained above, State Street produced more than nine million pages of documents potentially relevant to the issues and claims in the State Street Action. Consistent with Lieff Cabraser's practice in complex litigation document review (*see* discussion, *supra*, at 11, the firm's staff attorneys, along with staff attorneys from Labaton and staff attorneys paid for by Thornton, reviewed, issue-coded, analyzed, and completed issue memoranda concerning State Street's documents. The scope of that effort is described below.

All staff attorneys had access to the Catalyst document database hosted by Lieff Cabraser.[78] Online technical training on how to the use the database was provided by Lieff Cabraser's litigation support department Manager, Kirti Dugar, in conjunction with the staff at Catalyst.[79] The documents maintained in the Catalyst database consisted of all those documents produced by the parties in the State Street Action.[80]

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[76] *Id.*

[77] *Id.* at 16-17.

[78] *Id*. at 16; Ex. B to Fineman Declaration at 17-18.

[79] *Id.*

[80] *Id.*

Before the staff attorneys began their review and analysis of the documents, they were instructed to review relevant pleadings in the State Street Action, including the operative class action complaint and plaintiffs' memorandum in opposition to State Street's motion to dismiss.[81] In addition, each staff attorney was provided with and expected to read and understand the State Street Document Review Protocol, including the Document Review Coding Fields Quick Reference Guide, in which issue codes were listed, followed by descriptions of their relevance to the case.[82] In addition to these materials, emails from supervising attorneys communicating assignments on proposed topics for the factual, legal and/or discursive memoranda to be prepared by staff attorneys (discussed further below) contained descriptions, context and/or explanations for the topics assigned.[83]

The staff attorneys' job responsibilities and tasks included reviewing and coding of all documents produced by State Street for relevance and/or strength or weakness in support of plaintiffs' theory of the case.[84] In addition, the staff attorneys identified specific issues and topics addressed by each of the documents so they could be sorted and searched by subject matter or issue at a later date.[85] Staff attorneys also had the ability to enter attorney notes to explain or clarify the decision behind their coding determinations.[86] There were more than 30 different issue or document type codes available for assignment by staff attorneys to the

[81] *Id.* at 18.
[82] Ex. A to Fineman Declaration at 43-47; Ex. 57 to Report at 18.
[83] Ex. 57 to Report at 18.
[84] Ex. A to Fineman Declaration at 41; Ex. 57 to Report at 15-16.
[85] Ex. 57 to Report at 21.
[86] *Id.*

documents they reviewed.[87] The staff attorneys received appropriate supervision from Lieff Cabraser partners and senior staff to assure the quality of their work.[88]

The review and coding of State Street's documents was largely completed by the end of April 2015, after which the staff attorneys were tasked with preparing detailed memoranda on approximately 18 selected themes, issues or witnesses to be further developed in depositions and follow-up discovery.[89] Each memorandum prepared by the staff attorneys contained hyperlinks to supporting documents from State Street's productions, with some of the memoranda exceeding 100 pages.[90] The memoranda were circulated to the supervising attorneys on a rolling basis as they were completed.[91] Had the mediation ended without resolution of the State Street Action, the memoranda and included documents would have formed the principal repository of knowledge for the supervising attorneys as they prepared for depositions and pretrial litigation.[92]

2. Lieff Cabraser's Staff Attorneys Were/Are Well-Educated, Professionally Experienced and Skilled Lawyers.

Attached as Appendix A is narrative biographical information about each of Lieff Cabraser's 18 staff attorneys (with citations to the factual record), who worked on the State Street Action. Attached as Appendix B is a chart summarizing key information about each of these firm staff attorneys (with citations to the factual record).[93] The 18 Lieff Cabraser staff

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[87] Ex. A to Fineman Declaration at 41; Ex. 57 to Report at 21.

[88] *Id.* These memoranda were all produced to the Special Master at.

[89] Ex. A to Fineman Declaration at 41-42; Ex. 57 to Report at 21-22.

[90] *Id.*

[91] Ex. 57 to Report at 22-23.

[92] *Id.*

[93] All of the specific information about Lieff Cabraser's staff attorneys presented herein can be found in Ex. A to the Fineman Declaration at 18-40, and in Lieff Cabraser's Responses to Special Master Hon. Gerald E. Rosen's (Ret.) First Set of Interrogatories Due on July 10, 2017, dated July 10, 2017, particularly in the firm's responses to Interrogatory Nos. 24 and 25. This

attorneys who worked on the State Street Action were, in alphabetical order (with the number of hours each worked for Lieff Cabraser on the Action noted parenthetically): Tanya Ashur (843.50); Joshua Bloomfield (2,033.20); Elizabeth Brehm (1,682.90); Jade Butman (24.00); James Gilyard (882.00); Kelly Gralewski (1,475.90); Christopher Jordan (539.90); Jason Kim (904.00); James Leggett (893.00); Coleen Liebmann (24.00); Andrew McClelland (58.00); Scott Miloro (658.80); Leah Nutting (1,940.10); Marissa Oh (800.30); Peter Roos (780.00); Ryan Sturtevant (796.00); Virginia Weiss (473.50); and Jonathan Zaul (495.20).

The Lieff Cabraser staff attorneys who worked on the State Street Action each attended good to excellent colleges and law schools.[94] They each had years of experience in civil litigation and in document review and analysis in complex cases for major American law firms.[95] For example, as of 2016, five of the staff attorneys who worked on the State Street Action had more than 15 years of experience, six had between 10 and 15 years of experience, and six had between five and 10 years of experience.[96]

Lieff Cabraser's staff attorneys who worked on the State Street Action were selected in large part from the pool of staff attorneys who had worked previously or simultaneously on the BNY Mellon Action, and who had acquired substantial relevant experience concerning custodial FX trading, pricing, and marketing.[97] The thirteen Lieff Cabraser staff attorneys who worked on the BNY Mellon Action before and/or during the State Street Action were (with the number of hours each worked on that Action noted parenthetically): Ashur (2,414.50); Bloomfield (2,183); Gilyard (2,614.50); Gralewski (301.50); Jordan (1,572.90); Kim (2,659); Leggett (2,476.20);

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set of discovery Responses is not included as an exhibit to the Special Master's Report. The Responses are therefore attached as Ex. B to the Fineman Declaration.

[94] Appendices A and B.

[95] *Id*.

[96] *Id*.

[97] Ex. A to Fineman Declaration at 18; Ex. 57 to Report at 16.

McClelland (1,799); Miloro (3,146.80); Nutting (3,128.40); Oh (2,576.70); Weiss (1,445.80); and Zaul (2,197.90).[98]

Five other Lieff Cabraser staff attorneys who were assigned to the State Street Action did not work on the BNY Mellon Action. Of these, attorneys Brehm, Roos and Sturtevant brought significant relevant litigation experience to their contributions to the State Street Action, including: a background in document review analysis in financial fraud cases for plaintiff-side litigation firms (Brehm); extensive experience in financial and corporate transactions and documentation during an 18 year career with Baker & MacKenzie (Roos); and, significant experience in securities and financial fraud class actions while working for numerous major American law firms (Sturtevant).[99] Staff attorneys Butman and Liebmann also had meaningful prior experience in document review and analysis, but devoted only 24 hours each to the State Street Action.[100]

Of the 18 Lieff Cabraser staff attorneys who worked on the State Street Action, the following 11 were compensated directly by the firm during the time they worked on the Action: Ashur, Brehm, Gilyard, Gralewski, Jordan, Kim, Liebmann, Miloro, Oh, Roos, and Zaul.[101] The following four Lieff Cabraser staff attorneys were compensated initially by an agency (which billed the firm directly for their services), but became payroll employees of the firm in January 2015, during the pendency of the State Street Action: Bloomfield, Leggett, Nutting, and Sturtevant.[102] The following three Lieff Cabraser staff attorneys were compensated by an

[98] Appendices A and B.
[99] *Id*.
[100] *Id*.
[101] *Id*.
[102] *Id.*

agency throughout their work for the firm on the State Street Action: Butman, McClelland, and Weiss.[103]

The following Lieff Cabraser staff attorneys physically worked on the State Street Action in the firm's San Francisco offices: Ashur, Butman, Gilyard, Kim, Leggett, Liebmann, McClelland, Oh, Roos, and Sturtevant. Miloro worked in Lieff Cabraser's New York office.[104] The following Lieff Cabraser staff attorneys worked remotely on the State Street Action (with their remote work locations noted parenthetically): Bloomfield (San Francisco, California); Brehm (Shoreham, New York); Gralewski (San Diego, California); Jordon (Houston, Texas and Atlanta, Georgia); Nutting (San Francisco, California); Weiss (Rochester, Minnesota and Sacramento, California); and Zaul (San Francisco, California).[105]

The following 13 Lieff Cabraser staff attorneys who worked on the State Street Action are still employed by or are working on behalf of the firm (with the total number of years worked for Lieff Cabraser, as of June 2018, noted parenthetically): Ashur (5 years), Gralewski (9 years), Jordan (6 years), Kim (7 years), Leggett (5 years), Liebmann (4 years), Miloro (7 years), Nutting (6 years), Oh (5 years), Roos (6 years), Sturtevant (6 years), and Zaul (6 years).[106] Five of the Lieff Cabraser staff attorneys who worked on the State Street Action are no longer with the firm: Bloomfield, Brehm, Butman, Gilyard and McClelland.[107]

Consistent with the firm's rate setting policies (*see* discussion *supra* at 13-15), with the exceptions noted below, all of the Lieff Cabraser staff attorneys who worked on the State Street

[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] *Id.*
[107] *Id.*

Action (payroll and agency) were billed at an hourly rate of $415.[108] That hourly rate was consistent with the rate of a fourth year associate at the firm in 2016. *See* discussion *supra* at 14. Staff attorneys Bloomfield (class of 2000) and Butman (class of 1997) had an hourly rate of $515 per hour, which was equivalent to the hourly rate of a firm attorney in the class 2008.[109] The hourly rates used for these two attorneys were their rates in 2015, the year in which they left the firm and the year before the firm set all staff attorney rates at $415 per hour.[110] Staff Attorney Oh also had a billing rate of $515 per hour (equivalent to a Lieff Cabraser attorney in the class of 2008).[111] This rate was deemed appropriate by firm management in light of Oh's educational background (Stanford Law School), her graduation year (2004) and her extensive experience as a partner-track attorney at major law firms.[112]

3. Lieff Cabraser Shared and Hosted Staff Attorneys Paid For By Thornton.

By January 2015, more than half of the documents produced by State Street remained to be analyzed and coded.[113] The global settlement in the BNY Mellon Action and that settlement's attendant publicity created a pivotal moment in the State Street Action mediation. The parties needed to be prepared to proceed quickly to class certification, depositions and trial preparation should resolution not be achieved. Therefore, the parties agreed that the mediation should/would not extend past mid-2015.[114] Customer Class Counsel, including Lieff Cabraser,

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[108] *Id.*

[109] *Id.*

[110] *See* Appendices A and B; Ex. A to Fineman Declaration at 48.; Ex. 89 to Report, ECF No. 104-17, at 4.

[111] *Id.*

[112] Appendices A and B; Ex. A to Fineman Declaration at 48.

[113] Ex. A to Fineman Declaration at 49; Ex. B to Fineman Declaration at 7-8.

[114] Ex. A to Fineman Declaration at 13 and 49; Ex. B to Fineman Declaration at 7-8.

ramped up their document review accordingly in order to prepare the detailed issue, witness and liability memoranda described above.[115]

In early 2015, Lieff Cabraser agreed to share and/or host approximately five staff attorneys that would be partially or fully paid for by Thornton.[116] Labaton similarly agreed to share and/or host a number of staff attorneys that would be compensated, in whole or in part, by Thornton.[117] This arrangement was used due to Thornton's limited physical facilities and so that Thornton could bear an appropriate share of the cost of the document review and analysis.[118] It was also understood by Lieff Cabraser that Thornton would include the lodestar of the staff attorneys it paid for in any later fee request.[119]

Two of the staff attorneys Lieff Cabraser "shared" with Thornton were Jordan and Zaul.[120] As noted above, Jordon and Zaul both worked extensively for Lieff Cabraser on the BNY Mellon Action, both were on Lieff Cabraser's payroll, and both continue to work for Lieff Cabraser to this day.[121] For roughly a nine-week period between February and April 2015, Lieff Cabraser invoiced Thornton, and Thornton paid Lieff Cabraser, for the work performed by Jordan and Zaul.[122] For all other time periods during the State Street Action, Lieff Cabraser compensated Jordan and Zaul directly for any work they performed, without reimbursement from Thornton.[123]

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[115] Ex. A to Fineman Declaration at 49; Ex. B to Fineman Declaration at 7-8.
[116] Ex. A to Fineman Declaration at 50; Ex. 57 to Report at 23.
[117] Ex. 57 to Report at 23; Ex. 178 to Report, ECF No. 116.
[118] Ex. A to Fineman Declaration at 50; Ex. 57 to Report at 24; Ex. 175 to Report at 3.
[119] Ex. 57 to Report at 24; Ex. B to Fineman Declaration at 19; Ex. 10 to Report at 136-37.
[120] Appendices A and B; Ex. B to Fineman Declaration at 12, 18.
[121] Appendices A and B.
[122] Ex. 57 to Report at 25; Ex. B to Fineman Declaration at 18; Ex. 10 to Report at 156, 172.
[123] Appendices A and B; Ex. B to Fineman Declaration at 18; Ex. 10 to Report at 172.

Two other of these staff attorneys, McClelland and Weiss, had also worked extensively on the BNY Mellon Action for Lieff Cabraser.[124] Throughout their time with Lieff Cabraser, both of these attorneys were paid by an agency.[125] McClelland, who worked in Lieff Cabraser's San Francisco office, spent only 58 hours for Lieff Cabraser on the State Street Action (the bulk of his remaining hours were correctly allocated to Thornton, without duplication).[126] Weiss, who worked remotely, put in 473.50 hours on behalf of Lieff Cabraser in the State Street Action (with some additional hours also being correctly allocated to Thornton, without duplication).[127] Ms. Weiss continues to perform work for Lieff Cabraser today.[128] From February to mid-April, 2015, Thornton paid an agency directly for the legal services of McClelland and Weiss.[129]

Two additional staff attorneys – Ann Ten Eyck and Rachel Wintterle – were hired through and paid by an agency, which in turn was paid directly by Thornton.[130] These two staff attorneys worked physically in Lieff Cabraser's San Francisco office between February and June, 2015.[131] Neither Ten Eyck nor Wintterle had a prior or subsequent relationship with Lieff Cabraser.[132]

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[124] Appendices A and B.
[125] *Id.*
[126] Ex. 10 to Report at 151-152, 154; Ex. 41 to Report at 61.
[127] *Id.*; Appendices A and B.
[128] Appendices A and B.
[129] *Id.*; Ex. 57 to Report at 27; Ex. 10 to Report at 151-152, 154.
[130] Ex. A to Fineman Declaration at 50; Ex. B to Fineman Declaration at 11 and 18.
[131] *Id.*
[132] *Id.*

E. The Settlement And Attorneys' Fees Approval Process.

1. The Resolution of the State Street Action.

The parties in the State Street Action reached an agreement in principle to resolve the Action for $300 million on June 30, 2015.[133] The settlement term sheet, however, was not executed until September 2015, during which time the parties continued to negotiate a plan of allocation.[134] Almost nine months passed after the term sheet was executed, while State Street negotiated separate settlements with the DOJ and the Securities and Exchange Commission.[135] At a status conference on June 23, 2016, the parties notified the Court of the pending settlement and plans to submit it for preliminary approval.[136] At that hearing, the Court opined both on the likely fairness of the settlement, as well as the seeming reasonableness of Plaintiffs' Counsel's anticipated 25% attorneys' fee request.[137]

On July 26, 2016, Plaintiffs' Counsel filed a fully executed settlement agreement, along with a motion for preliminary approval of the settlement which included proposed forms of class notice.[138] Following a hearing held on August 8, 2016, on August 11, 2016, the Court issued a preliminary approval order which, among other things: preliminarily found the settlement to be fair, reasonable and adequate; preliminarily certified the settlement class; appointed Labaton as lead counsel, Thornton as liaison counsel, and Lieff Cabraser as additional counsel for the settlement class; approved the forms, substance and method of dissemination of the class notice; set deadlines and procedures for the serving and filing of objections to the settlement and/or

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[133] Ex. A to Fineman Declaration at 15; Ex. 3 to Report, ECF No. 104, at 20-24.
[134] *Id.*
[135] Ex. A to Fineman Declaration at 16; Ex. 3 to Report, ECF No. 104, at 20-24.
[136] *Id.*; ECF No. 85.
[137] *Id.*
[138] Ex. 75 to Report, ECF No. 89; ECF Nos. 90-92.

attorneys' fee request; set deadlines and procedures for requesting exclusion from the settlement class; and set a final approval hearing for November 2, 2016.[139]

2. Notice to the Class.

On August 22, 2016, notice of the settlement was provided to the class via direct mail and publication.[140] The notice advised class members of the factual background of the State Street Action; summarized the class settlement, the benefits available to class members, the plan of allocation of settlement proceeds, and Plaintiffs' Counsel's request for attorneys' fees and reimbursement of expenses; described the method and timing for opting out or objecting to the settlement; and provided the date for final settlement approval.[141]

With respect to attorneys' fees, the notice advised class members: "Lead counsel, on behalf of ERISA and Customer Counsel, will apply to the Court awarding attorneys' fees in an amount not to exceed $74,541,250.00 [approximately 25% of the settlement fund] and payment of Litigation Expenses in an amount not to exceed $1,750,000.00, plus interest earned on these amounts."[142]

3. The Final Settlement Approval Papers and Request for Payment of Attorneys' Fees.

On September 15, 2016, all plaintiffs (ATRS and the ERISA plaintiffs) filed their motion and legal memorandum in support of final settlement approval.[143] Also on September 15, 2016, Labaton, as lead counsel acting on behalf of all Plaintiffs' Counsel, filed a motion and

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[139] Exs. 111 and 112 to Report, ECF Nos. 93 and 97.

[140] Ex. 81 to Report.

[141] *Id*.

[142] *Id*. at 4. The notice further advised class members that they could obtain copies of the settlement agreement, as well as other litigation and settlement-related documents at www.statestreetindirectfxclasssettlement.com, or by contacting Labaton (as lead counsel) or the claims administrator. *Id*. at 15.

[143] ECF No. 101-1.

memorandum for an award of attorneys' fees, payment of expenses, and payment of service awards, along with the Omnibus Declaration and exhibits.[144] Among the exhibits attached to the Omnibus Declaration were individual firm declarations and lodestar reports from Plaintiffs' Counsel (showing those firms' timekeepers and their individual and aggregate hours worked and hourly rates).[145] Labaton, as lead counsel, took primary responsibility for the preparation of the attorneys' fee and expenses request, drafting the memorandum and the Omnibus Declaration.[146] Lieff Cabraser provided Labaton with editorial comments on both of those documents.[147] Lieff Cabraser did not, however, see the individual lodestar reports of Labaton, Thornton or ERISA Counsel before they were filed with the Court as exhibits to the Omnibus Declaration.[148]

Lieff Cabraser partner Daniel P. Chiplock prepared a declaration on behalf of the firm in support of the motion for award of attorneys' fees and expenses (the "Chiplock Declaration"), which was filed as an exhibit to the Omnibus Declaration.[149] The Chiplock Declaration summarized the history of the firm's involvement in the California Action, the specific tasks performed by the firm in the State Street Action, and attached a "Lodestar Report"

> 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 on the billing rates for each 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.[150]

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[144] Exs. 3 and 110 to Report, ECF Nos. 103-1 and 104.

[145] Ex. 3, 66, 88-95 and 100 to Report.

[146] Ex. A to Fineman Declaration at 17; Ex. 175 to Report at 9-13.

[147] *Id.*

[148] *Id.*

[149] Ex. 89 to Report, ECF No. 104-17 at 1-3 and Exhibit "A"; Ex. 175 to Report at 9-10.

[150] *Id.* at 2-3.

Among other things, the Lieff Cabraser Lodestar Report specified which firm timekeepers were partners, associates and staff attorneys.[151] In total, Lieff Cabraser reported 20,458.5 hours worked for a total lodestar of $9,800,487.50.[152]

Labaton, on behalf of all Plaintiffs' Counsel, requested a percentage-of-the-recovery fee award of roughly 25% of the total settlement fund of $300 million based on the factors commonly considered by courts within the First Circuit and in typical contingent fee percentages awarded in complex class cases such as the State Street Action.[153] The reasonableness of the fee request was bolstered by the Court's comments during the June 23, 2016 status conference during which the Court stated that a 25% fee percentage was "great" and was the level at which the Court "start[ed] ordinarily."[154] The lodestar of each of the Plaintiffs' Counsel firms, including Lieff Cabraser, was submitted to the Court solely for "cross-check" purposes in order to assist the Court in determining whether a 25% fee was appropriate in light of the work performed and risks undertaken.[155]

4. The Court's Approval of the Settlement and the Attorneys' Fees Request.

The final fairness hearing of the settlement of the State Street Action occurred on November 2, 2016.[156] During that hearing, the Court announced that it did not believe "either the question of class certification or the question of whether the settlement is fair, reasonable and adequate is a close question. I think the answer to both is yes."[157] Observing that the class

[151] *Id.*, Ex. A.
[152] *Id*.
[153] Ex. 110 to Report, ECF No. 103-1 at 3-24; Ex. B to Fineman Declaration at 25-26.
[154] ECF No. 85; Ex. A to Fineman Declaration at 16; Ex. B to Fineman Declaration at 25-26.
[155] Exs. 3, 66, 88-95 and 110 to Report.
[156] Ex. 78 to Report, ECF No. 114.
[157] *Id*. at 18.

members were sophisticated institutional investors, the Court found that the "settlement of $300 million is fair, reasonable and adequate, again essentially for the reasons stated on August 8, 2016 [at the preliminary approval hearing] and the additional facts that no class member has objected, no class member has opted out."[158]

In considering the attorneys' fee request, the Court found Plaintiffs' Counsel's request for $74,541,250 in fees and $1,257,699.94 in expenses was reasonable.[159] The Court stated that it is "appropriate in this case to use the percentage of the common fund approach in determining the amount of attorneys' fees that should be awarded."[160] The Court went on to state:

> I have used the percentage of common fund method. I have used the reasonable lodestar to check on that I've also considered the awards in comparable cases. The $74,500,000 plus is about – well, is 24.48 percent of the settlement fund. Adding in litigation expenses brings it to 25.27 percent of the settlement fund. Adding the service awards makes it a little higher. This is in the 20 to 30 percent range usually awarded by me in class action common fund cases and in many cases with settlements in the First Circuit and in many cases where the settlements are [in] a $250 million to $500 million range.[161]

The Court also used the "reasonable lodestar" of $41.3 million to determine that the approximately 25% percentage-of-the-recovery fee request was appropriate: "The amount awarded is about 1.8 times the lodestar. The lodestar is about $41 million. This is reasonable. In this case the plaintiffs' lawyers took on a contingent basis a novel, risky case. The result at the outset was uncertain, and it remained, until there was a settlement, uncertain."[162]

On the same day as the final fairness hearing, November 2, 2016, the Court entered orders finally approving the settlement and the plan of allocation, as well the award of attorneys'

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[158] *Id*. at 18-19.
[159] *Id*. at 35.
[160] *Id*. at 22-23.
[161] *Id*. at 35.
[162] *Id*. at 36.

fees "in the amount of $74,541,250.00, plus any accrued interest, which was approximately 25% of the Class Settlement Fund, along with payment of expenses in the amount of $1,257,697.94,…"[163] The Court specifically found that the "amount of attorneys' fees awarded is fair and reasonable and consistent with fee awards approved in cases within the First Circuit and other Circuits with similar recoveries."[164]

F. The Inadvertent Double-Counting Of Certain Staff Attorney Time.

1. Lieff Cabraser's Discovery and Response to the Inadvertent Double-Counting of Some of Their Staff Attorneys' Hours.

On November 8, 2016, David J. Goldsmith of Labaton informed Chiplock of Lieff Cabraser that a reporter from the Boston Globe had inquired about the appearance of certain attorneys on more than one of Customer Class Counsel's lodestar reports.[165] Upon learning of that inquiry, Lieff Cabraser, through Chiplock, promptly identified time and lodestar included in the firm's Lodestar Report that was also included as part of the Thornton fee submission (the latter of which had not been shared with Lieff Cabraser before it had been filed with the Court).[166] Chiplock identified these duplicative time entries: (a) by reviewing prior email correspondence between and among Lieff Cabraser and the other Customer Class Counsel during the early to mid-2015 timeframe; (b) through confirmatory emails by and between personnel at Lieff Cabraser and Thornton; (c) by reviewing the detailed time reports for the staff attorneys Lieff Cabraser shared with or hosted for Thornton; and, (d) by reviewing Thornton's fee submission (which, again, the firm had not seen prior to its filing with the Court).[167]

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[163] ECF Nos. 110, 111 at ¶4, and 112.

[164] ECF No. 111 at ¶6(a).

[165] Ex. 175 to Report at 19.

[166] Ex. A to Fineman Declaration at 51-53; Ex. 175 to Report at 20; Ex. B to Fineman Declaration at 27-28.

[167] *Id.*

Lieff Cabraser's internal review showed that two of the staff attorneys who split time performing work for both Lieff Cabraser and Thornton – McClelland and Weiss (*see* discussion *supra* at 30) – showed no duplicative time in Lieff Cabraser's or Thornton's reports. In other words, the reported hours for McClelland and Weiss were correctly allocated between Lieff Cabraser and Thornton, and there was no error to report for them.[168]

Two other staff attorneys who split time between Lieff Cabraser and Thornton, however – Jordan and Zaul (*see* discussion *supra* at 29) – did have time that was inadvertently duplicated in Lieff Cabraser's Lodestar Report.[169] As explained above, Jordan and Zaul worked for Lieff Cabraser and were paid directly by the firm before, during, and after their brief stints for Thornton, and were therefore accustomed to submitting their contemporaneous time records to the firm on a daily basis.[170] The inadvertent duplication of their time in Lieff Cabraser's Lodestar Report occurred because the time these two attorneys spent reviewing documents assigned to Thornton between February 9, 2015 and April 14, 2015 was mistakenly not removed from Lieff Cabraser's timekeeping records after the firm's accounting department invoiced and received payment for those hours from Thornton.[171] This was an inadvertent bookkeeping error.[172]

The two other staff attorneys whose time was incorrectly included in Lieff Cabraser's Lodestar Report – Ten Eyck and Wintterle – were hired through an agency that was paid directly by Thornton. *See* discussion *supra* at 30.[173] Those attorneys should not have entered any time

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[168] *Id.*
[169] *Id.*
[170] *Id.*
[171] *Id.*
[172] Ex. 175 to Report at 20; Ex. B to Fineman Declaration at 27-28; Ex. 10 to Report at 152-157.
[173] *Id.*

summaries into the Lieff Cabraser timekeeping system.[174] However, they did so throughout the three to four months they worked in Lieff Cabraser's San Francisco office (March – June 2015), by emailing their time summaries directly to the firm's word processing department (consistent with typical staff attorney practice) while also reporting their time to both their employing agency and to Thornton, unbeknownst to the attorneys and staff overseeing the case.[175] This was an inadvertent oversight in their training in San Francisco.[176]

After these errors were discovered on November 9, 2016, Chiplock instructed Lieff Cabraser's accounting department to remove all of the erroneously recorded hours that in fact had been Thornton's financial responsibility from Lieff Cabraser's timekeeping records.[177] This resulted in Lieff Cabraser correcting its lodestar as follows: [178]

Originally Reported Hours and Lodestar	
Hours	Lodestar
20,458.50	$9,800,487.50
Corrected Hours and Lodestar	
Hours	Lodestar
18,696.70	$8,932,070.50
Difference	
Hours	Lodestar
1,761.80 (8.6%)	$868,417.00 (8.8%)

Lieff Cabraser provided its "corrected lodestar" figures to Labaton and assisted in the drafting of the November 10, 2016 corrective letter from Goldsmith to the Court.[179]

[174] *Id.*
[175] *Id.*
[176] *Id.*
[177] Ex. 57 to Report at 26.
[178] Ex. A to Fineman Declaration at 53.
[179] Ex. 175 to Report at 21; Ex. 10 to Report at 184-189.

2. The November 10, 2016 Goldsmith Letter.

On November 10, 2016, Goldsmith, writing on behalf of Customer Class Counsel, informed the Court of the inadvertent double counting of certain staff attorneys shared with or hosted by Labaton and Lieff Cabraser on behalf of Thornton (the "Goldsmith Letter").[180] Goldsmith explained that because of these "inadvertent errors, Plaintiffs' Counsel's reported combined lodestar of $41,323,895.75, and reported combined time of 86,113.70 hours were overstated."[181] Goldsmith explained that deducting the "duplicative time from the $41.32 million reported combined lodestar results in a reduced combined lodestar of $37,265,241.25, and reduced combined time of 76,790.80 hours."[182]

Goldsmith went on to point out that "[c]ross-checking the $37.27 million in reduced combined lodestar against the $74,541,250 percentage-based fee awarded by the Court yields a lodestar multiplier of 2.00. [Footnote omitted.] This is higher than the 1.8 multiplier we proffered in our submissions and during the hearing."[183] Goldsmith, on behalf of Plaintiffs' Counsel, then respectfully submitted that a "2.00 multiplier remains reasonable and well-within the range of multipliers found reasonable for cross-check purposes in common fund cases within the First Circuit…," and requested that the Court "adhere" to its prior ruling on attorneys' fees notwithstanding the reduced lodestar."[184]

Goldsmith concluded the letter by apologizing to the Court for the "inadvertent errors in our written submissions and presentation during the hearing," and advised the Court that counsel

[180] Ex. 178 to Report, ECF No. 116.
[181] *Id*. at 2.
[182] *Id*. at 3.
[183] *Id*.
[184] *Id*.

was "available to respond to any questions or concerns the Court may have."[185] The Court did not hold a hearing or otherwise communicate with Plaintiffs' Counsel about this matter until almost three months later.[186]

G. The "Clawback" Agreement and Distribution of Attorneys' Fees.

In a letter to Plaintiffs' Counsel dated November 21, 2016, Sucharow of Labaton noted that the settlement of the State Street Action would become effective on December 7, 2016, and that because there were no objections to the settlement or requested fees, no class member had standing to appeal.[187] Sucharow observed that the Court had not yet responded to the Goldsmith Letter, and stated that if the "Court remains silent as of close of business on December 7, 2016, we [Labaton, as lead counsel] will begin the process of withdrawing the approved fees, expenses and service awards from the Lead Counsel Escrow Account for prompt distribution to your respective firms pursuant to our agreements."[188]

Sucharow continued by acknowledging that it remained "possible, however, that the Court, on or after December 8, 2016, will respond adversely to the [Goldsmith Letter] and ultimately reduce the fee award… after the fees, expenses and service awards have been distributed to your respective firms (and to the other ERISA counsel)."[189] Accordingly, Labaton required that before fees and expenses be distributed, "we will require an undertaking, evidenced by your signature below, confirming your agreement to refund to us within five (5) business days, for redeposit into the Lead Counsel Escrow Account, your *pro rata* share of any Court-

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[185] *Id.*
[186] Ex. 180 to Report, ECF No. 117.
[187] Ex. 179 to Report, ECF No. 116.
[188] *Id.*
[189] *Id.*

ordered reduction of fees, expenses, and/or service awards."[190] Plaintiffs' Counsel, including Lieff Cabraser, consented to this "clawback" agreement.[191]

Pursuant to a written agreement entered into on August 30, 2016, Lieff Cabraser was entitled to 24% of the attorneys' fees allocated to Customer Class Counsel, which received 84.5% of the total fee award, with 10% of the balance going to ERISA Counsel and 5.5% of the total going to "Labaton Sucharow's local counsel."[192] This meant that Lieff Cabraser was entitled to 20.3% of the total attorneys' fee award, along with reimbursement of the firm's expenses.[193] On December 7, 2016, Labaton distributed to Lieff Cabraser its share of the awarded attorneys' fee, $15,116,965.50, along with $271,944.53 in expenses.[194] Using Lieff Cabraser's corrected lodestar total of $8,932,070.50, the corrected and actual lodestar multiplier for Lieff Cabraser was at that time 1.69, below the aggregate corrected lodestar multiplier of 2.0 (and, indeed, below the original uncorrected aggregate reported lodestar multiplier of 1.8).[195]

H. The Attorneys' Fees Investigation By The Special Master.

1. Order Appointing the Special Master.

On December 17, 2016, the Boston Globe published an article, "Critics hit law firms' bills after class-action lawsuits."[196] That article addressed, among other things, the double-counting of certain staff attorney time, the position asserted in the Goldsmith Letter that the Court's fee award remained appropriate after deducting the incorrectly included lodestar, and

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[190] *Id.*
[191] *Id.*
[192] Ex. I to Fineman Declaration at 3-4; Report at 86-88.
[193] *Id.*
[194] *Id.*
[195] Ex. A to Fineman Declaration at 54; Ex. B to Fineman Declaration at 26.
[196] ECF No. 117.

new questions about whether the hourly rates attributed to the staff attorneys who worked on the State Street Action were justified.[197]

Referring to the Goldsmith Letter and the Boston Globe article, in a Memorandum and Order dated February 6, 2017, the Court proposed to appoint former United States District Judge Gerald E. Rosen as a special master to investigate issues that "have arisen with regard to the accuracy and reliability of information submitted by plaintiffs' counsel on which the court relied, among other things, in deciding that it was reasonable to award them almost $75,000,000 in attorneys' fees and more than $1,250,000 in expenses."[198]

Following written responses from Plaintiffs' Counsel, including Lieff Cabraser, and after a March 7, 2017 hearing, in a Memorandum and Order dated March 8, 2017, the Court appointed Judge Rosen as Special Master pursuant to Rule 53 of the Federal Rules of Civil Procedure ("Federal Rules"), and directed that Judge Rosen investigate and prepare a report and recommendation concerning, among other issues:

> (a) the accuracy and reliability of the representations made by the parties in their requests for awards of attorneys' fees and expenses, including but not limited to whether counsel employed the correct legal standards and had a proper factual basis for what was represented to be the lodestar for each firm; (b) the accuracy and reliability of the representations made in the November 10, 2016 Letter from David Goldsmith, Esq. of Labaton Sucharow, LLP to the Court (Docket No. 116); (c) the accuracy and reliability of the representations made by the parties requesting service awards; (d) the reasonableness of the amounts of attorneys' fees, expenses, and service awards previously ordered, and whether any or all of them should be reduced; (e) whether any misconduct occurred in connection with such awards; and, if so, (f) whether it should be sanctioned, *see e.g.*,

[197] *Id.* Although mentioned briefly in the Boston Globe article, Lieff Cabraser was not contacted for comment nor given the opportunity to respond to the class action "critics" cited liberally in the piece.

[198] Ex. 180 to Report, ECF No. 117, at 1-2.

> Fed.R.Civ.P. 11(b)(3) & (c); Massachusetts Supreme Judicial Court Rule of Professional Conduct 3.3(a)(1) & (3).[199]

The Court's March 8, 2017 Order further directed Customer Class Counsel to pay $2 million into a fund to be used by the Special Master for purposes of his investigation.[200] The Court ordered that that fund would be used to "pay the reasonable fees and the expenses of the Master and any firm, organization, or individual he may retain to assist him."[201] In subsequent orders dated October 24, 2017 and April 23, 2018, the Court further instructed Customer Class Counsel to pay an additional $1.8 million toward the Special Master's fees and expenses.[202] To date, Customer Class Counsel has collectively paid $3.8 million for the fees and expenses of the Special Master and his team. The economic impact on Lieff Cabraser from funding its share of the Special Master's investigation, and all other aspects of the investigation, is described below. *See* discussion *infra* at 64-66.

2. The "Informal" Phase of the Investigation.

The Special Master's investigation began with an "informal" phase. After providing the Special Master with all settlement approval and fee request documentation, the Master invited each of the Plaintiffs' Counsel firms to meet with him in non-sworn, informal fact-gathering sessions. Lieff Cabraser, through the firm's general counsel and senior partner, Richard M. Heimann, the firm's managing partner, Steven E. Fineman, and Chiplock, met with the Special

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[199] Ex. 163 to Report, ECF No. 173, at 2-3.

[200] *Id*. at 6.

[201] *Id.* In total, the Special Master's team included William Sinnott, Elizabeth McEvoy and Brian Mulcahy, of Barrett & Singal, P.C. (collectively referred to herein as "counsel" for the Special Master); Linda Hylenski, a former law clerk for Judge Rosen and currently a research attorney with JAMS; the Hon. Mary Beth Kelly, a former justice of the Michigan Supreme Court, currently a JAMS mediator and arbitrator; John Toothman, an attorney and purported authority on legal fees; and, Professor Stephen Gillers, a proffered expert on ethical and professional conduct issues. Report at 137.

[202] ECF Nos. 208 and 217.

Master, his assistant, Hylenski, his counsel, Sinnott and McEvoy, and the Special Master's attorneys' fee consultant, Toothman, on April 5, 2017 at the New York offices of JAMS.[203]

During Lieff Cabraser's April 5, 2017 meeting with the Special Master and his team, the firm provided the Master with a 67 page written presentation which framed and guided much of that multi-hour interview ("Presentation").[204] That Presentation addressed the following topics:

- About Lieff Cabraser
- How Lieff Cabraser staffs large complex cases
- How Lieff Cabraser sets hourly rates, including for staff attorneys
- Involvement in the *State Street* case
- Involvement in the *BNYM FX* case
- Resolution of the *BNYM* and *State Street* cases
- Fee application process in *State Street*
- Background of Lieff Cabraser staff attorneys who worked on *State Street*
- Role of Lieff Cabraser staff attorneys in *State Street*
- *State Street* Document Review Protocol
- Hourly rates applied to Lieff Cabraser staff attorneys in *State Street*
- Coordination of staff attorneys with Labaton and Thornton firms
- Lieff Cabraser's hourly duplication mistake explained
- Lieff Cabraser's fee and corrected lodestar in *State Street*
- Hourly rates of Lieff Cabraser staff attorneys paid by clients
- Lieff Cabraser staff attorneys are routinely included in and approved in class action fee awards[205]

The essential facts as they relate to Lieff Cabraser, including the firm's inadvertent double counting of time of four staff attorneys, and the propriety of the hourly rates applied to Lieff Cabraser's attorneys (including its staff attorneys), were included in the firm's April 5, 2017 Presentation, discussed during that meeting with the Special Master, and were later

[203] Throughout the Special Master's investigation, Lieff Cabraser has represented itself through Messrs. Heimann, Fineman and Chiplock.

[204] Ex. A to Fineman Declaration.

[205] *Id.*

reiterated through formal written and deposition discovery.[206]

3. The "Formal" Phase of the Investigation.

On May 18, 2017, the Special Master, through his counsel, propounded on Lieff Cabraser 53 document requests and 77 interrogatories.[207] Similar discovery was served on Labaton and Thornton. On May 23, 2017 the Special Master, through his counsel, propounded annotated and revised written discovery on Lieff Cabraser (and Labaton and Thornton), reducing the number of document requests and interrogatories that would require responses from the firm to 35 and 64, respectively, and modified the schedule for responding to the discovery to three dates (June 1, June 9, and July 10, 2017).[208] Lieff Cabraser responded to the Special Master's written discovery as follows:

- May 26, 2017 – Lieff Cabraser Heimann & Bernstein, LLP's Responses to Special Master Honorable Gerald E. Rosen's (Ret.) First Request for the Production of Documents (written responses to 35 document requests).[209]
- June 1, 2017 – Lieff Cabraser Heimann & Bernstein, LLP's Responses to Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories Due on June 1, 2017 (responses and objections to 20 interrogatories).[210]
- June 1, 2017 – Lieff Cabraser's production of documents responsive to the Special Master's request for production due June 1, 2017 via link to LCHB's file-share system.
- June 2, 2017 – Lieff Cabraser's production of documents responsive to the Special Master's request for production due June 1, 2017 via link to LCHB's file-share system.

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[206] In addition to providing the Presentation to the Special Master and his counsel at the time of the informal meeting, it was later produced to the Special Master during the formal phase of the investigation. *See* note 4, *supra*. The Presentation is not included among the exhibits to the Special Master's Report

[207] Ex. C to Fineman Declaration.

[208] Ex. D to Fineman Declaration.

[209] Ex. E to Fineman Declaration.

[210] Ex. 57 to Report.

- June 9, 2017 – 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 (written responses and objections to 22 interrogatories).[211]

- June 9, 2017 – Lieff Cabraser's production of documents responsive to the Special Master's request for production due June 9, 2017 via link to LCHB's file-share system.

- July 10, 2017 – Lieff Cabraser Heimann & Bernstein, LLP's Responses to Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories Due on July 10, 2017 (written responses and objections to 22 interrogatories).[212]

- July 10, 2017 – Lieff Cabraser's production of documents responsive to the Special Master's request for production due July 10, 2017 via link to LCHB's file-share system.

Between June 5, 2017 and July 17, 2017, the Special Master took 39 depositions of personnel from the Plaintiffs' Counsel firms.[213] Attached as Appendix C is a chart identifying each deponent, the date of deposition, the number of pages of testimony, the total deposition time, and the Special Master's personnel in attendance at the deposition.

The Special Master, and his counsel, took depositions of nine representatives from Lieff Cabraser, including firm partners Heimann, Fineman, and Chiplock; staff attorneys Ashur, Gralewski, Jordan, Oh, and Zaul; and, the firm's litigation support manager, Dugar.[214] The deposition testimony of Lieff Cabraser's attorneys and staff reiterated the information provided

[211] Ex. 175 to Report.

[212] Ex. B to Fineman Declaration.

[213] The firm uses the phrase the "Special Master and as counsel" because typically both the Master and his counsel, Sinnott, alternated asking questions of the witnesses, frequently covering the same ground, and in the case of the Special Master, periodically offering his views on the topic being covered.

[214] Exs. 10, 18, 19, 55, 59, 61, 101, 104 and 106 to Report.

by the firm in the November 10, 2016 Goldsmith Letter, the April 5, 2017 Presentation, and its responses to the Special Master's written discovery, and is further reflected in this Response and Objections.[215]

On July 5, 2017, the Special Master made a request for a supplemental submission from Customer Class Counsel, inviting Counsel to "provide any information they should find relevant, as such information will inform the Special Master's findings, conclusions, and recommendations presented in his final Report and Recommendation."[216] In particular, the Special Master asked Customer Class Counsel to address the issues relating to the "areas of concern" identified in the Court's March 8, 2017 Memorandum and Order, and to provide input on additional "topics which have arisen during the course of the Special Master's investigation and are related to his mandate from Judge Wolf."[217]

On August 1, 2017, Customer Class Counsel submitted a Consolidated Response to the Special Master's July 5, 2017 request. In its Response, Customer Class Counsel specifically addressed the areas of concern raised by the Court and the specific topics identified by the Special Master, all with citations to the written discovery responses and deposition testimony to date. The Response was augmented by an accompanying July 31, 2017 Expert Declaration of William B. Rubenstein, the Sidley Austin Professor of Law at Harvard Law School and a leading national expert on class action law generally and class action fees in particular ("Rubenstein Declaration I").[218]

In their Consolidated Response, Customer Class Counsel stated:

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[215] *Id.*

[216] Ex. F to Fineman Declaration.

[217] *Id.*

[218] Neither the Consolidated Response nor Rubenstein Declaration I are exhibits to the Special Master's Report, and therefore are attached as Exs. G and H to the Fineman Declaration.

- Counsel employed the correct legal standards in their request for an award of attorneys' fees and expenses;

- Except for the inadvertent double-counting of certain staff attorneys' time, as reported in the November 20, 2016 Goldsmith Letter, the representations made by counsel in their request for awards of attorneys' fees and expenses were accurate and reliable.

- The attorneys' fees and expenses awarded to Plaintiffs' Counsel were reasonable when made, and should not be reduced beyond the $2 million already contributed to the cost of the Special Master's investigation; and

- The billing rates for staff attorneys who worked on the State Street Action were based on the firms' understanding of appropriate market rates for the legal services rendered, and that based on the work performed by those staff attorneys, the hourly rates submitted as part of the lodestar cross-check against the percentage of the fee recovery were appropriate.[219]

In the Consolidated Response, Lieff Cabraser specifically addressed questions raised by the Special Master about whether it was appropriate to assign the same hourly rates to staff attorneys paid directly by the firm and those paid by an agency, and whether such agency attorneys should be treated as a cost instead accounting for their time as part of the firm's lodestar.[220] With reference to the factual record and the Rubenstein Declaration I, Lieff Cabraser made the following points on this topic:

- Some staff attorneys began their work on the litigation as agency attorneys before being hired directly by the firm;

- By the time the staff attorneys were working on the detailed issue memoranda only one Lieff Cabraser staff attorney was still being paid through an agency (Weiss);

- Staff attorneys and agency attorneys were given the same type of assignments, supervised in the same manner, and were expected to produce the same quality of work (Weiss, for example, authored detailed issue memoranda just like the others);

[219] Ex. G to Fineman Declaration at 2-5.

[220] *Id.* at 4-5.

- Ten Eyck and Wintterle, agency lawyers paid by Thornton but working in Lieff Cabraser's offices, also prepared issue memoranda just like the others;

- Billing rates for all firm staff lawyers, including those from an agency, were set based on the firm's understanding of the appropriate market rates for similar legal services; and,

- The amount paid by the firm to an agency for an agency attorney's work on an hourly basis was comparable to the hourly pay for staff attorneys paid directly by the firm.[221]

With the submission of the August 1, 2017 Consolidated Response, Lieff Cabraser assumed the Special Master's investigation was complete and that the Master would proceed to prepare a final report and recommendation. As explained below, however, the Special Master's investigation took, what was for Lieff Cabraser at least, an unexpected turn.

4. The "Chargois" Investigation.

During the course of its investigation, the Special Master learned that 5.5% (or $4.1 million) of the attorneys' fee awarded by the Court in the State Street Action was allocated to attorney Damon Chargois, at all times understood by Lieff Cabraser to be Labaton's "local counsel" in Arkansas.[222] According to the Special Master, because Chargois had not appeared on any of the pleadings in the State Street Action and had not been identified to the Court as a prospective recipient of attorneys' fees, the Master commenced an investigation into the relationship between Chargois and Customer Class Counsel and the basis upon which Chargois was compensated.[223]

[221] *Id.* In his June 6, 2017 deposition testimony, Lieff Cabraser managing partner Fineman made many of these same points, and emphasized to the Special Master that the firm incurs "overhead" expenses in connection with all of its staff attorneys, including those paid directly by an agency. Ex. 18 to Report at 47-55.

[222] Report at 87.

[223] *Id.*

a. August 11, 2017 Written Discovery Responses.

The Chargois investigation commenced with written discovery propounded on Lieff Cabraser (and on the other Plaintiffs' Counsel) on August 7, 2017. Lieff Cabraser responded as follows:

- August 11, 2017 – Lieff Cabraser Heimann & Bernstein, LLP's Responses to Special Master Honorable Gerald E. Rosen's (Ret.) Supplemental Interrogatories Due on August 11, 2017 (responses and objections responding to one multi-part interrogatory);[224] and,
- Lieff Cabraser Heimann & Bernstein, LLP's Responses to Special Master Honorable Gerald E. Rosen's (Ret.) Supplemental Request for the Production of Documents (responses and objections to one request for all documents in the firm's possession concerning Chargois).[225]

In Lieff Cabraser's August 11, 2017 interrogatory responses, the firm informed the Special Master of its limited knowledge of and complete lack of contact with Chargois. In particular, Lieff Cabraser advised the Special Master that the firm had no contact with Chargois in the State Street Action other than several emails on which Lieff Cabraser attorneys were copied, and that no Lieff Cabraser attorney had ever met or spoken with Chargois.[226] Lieff Cabraser explained to the Special Master that the firm was informed and understood at all times that Chargois was "local counsel" in Arkansas (the location of the lead plaintiff ATRS); that Labaton owed Chargois 20% of its share of any fee award in the State Street Action; and, that at the request of Labaton and Thornton, the firm agreed that 5.5% of the aggregate fee award in the Action (an amount estimated to equal Labaton's 20% obligation) would be paid to Chargois for his services.[227]

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[224] Ex. I to Fineman Declaration.

[225] Ex. J to Fineman Declaration.

[226] Ex. I to Fineman Declaration.

[227] *Id.* In their August 11, 2017 interrogatory responses, Lieff Cabraser also responded to the Special Master's inquiry why the firm had not previously produced the fee allocation

b. September/October 2017 Depositions.

Between September 1, 2017 and October 25, 2017, the Special Master, through his counsel, conducted 15 depositions concerning the Chargois investigation.[228] Only two of those deponents – Chiplock and Robert L. Lieff – were from Lieff Cabraser. *Id.*[229] During their depositions, Chiplock and Lieff confirmed that Chargois was repeatedly described and represented to the firm as "local counsel" for Labaton and/or ATRS; that they were informed that Chargois had played an "important" role in the litigation and had provided legal services that were of value to the client and therefore to the class; that they were familiar with the role of local counsel in large financial fraud cases (particularly those led by public pension fund clients); that they appreciated that Chargois' role was similar to that of the local counsel for the firm's public pension fund client in the BNY Mellon Action; and, that based on their past experience, they did not believe that fees of approximately 5% to local counsel were unreasonable in view of what they understood about Chargois' role in the case.[230]

Further, it was not until certain deposition testimony in September and October 2017, that Lieff Cabraser first learned that Labaton had an agreement in place to pay Chargois (or his law firm) up to 20% of attorneys' fees received by Labaton in any litigation involving an institutional

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agreement or related emails showing that 5.5% of any aggregate fee award would be paid to "Labaton Sucharow's local counsel." *Id*. Lieff Cabraser explained to the Special Master that the firm "simply in good faith did not understand [the fee allocation agreement or related emails] to be responsive to the Master's prior discovery requests," pointing out that the originally propounded document request seeking such information had been specifically withdrawn by the Master's counsel and that no interrogatory sought the specific fee allocation by and among Plaintiffs' Counsel. *Id*. When the Special Master asked for the fee allocation agreement and related email correspondence, Lieff Cabraser promptly and thoroughly complied. *See* LCHB-0053483 – LCHB-0053569. In his Report, the Special Master notes that he "does not conclude that the non-disclosure constitutes discovery misconduct." Report at 119, n. 98.

[228] *See* Appendix C.

[229] *Id.*; Exs. 41 and 139 to Report.

[230] Ex. 41 to Report at 100-105, 109-111, 115-118, 150-152; Ex. 139 to Report at 57-68, 72-97.

investor for whom Chargois had facilitated the introduction, including ATRS, or that this arrangement dated back to approximately 2007.[231] Moreover, it was not until conduct of the depositions in September and October 2017 that Lieff Cabraser first learned that Chargois had not served as local counsel for Labaton and/or ATRS in the State Street Action, had performed no work in the Action, and was not known to the client representative for ATRS.[232] Lieff himself testified that had he known of the true nature of the Chargois arrangement he would not have agreed that the firm share in the payment of fees to Chargois.[233]

c. November 3, 2017 Submission.

On September 7, 2017 the Special Master propounded on Lieff Cabraser a request for a supplemental submission concerning "the circumstances of the monies paid to attorney Damon Chargois in the State Street case for his role as a referring attorney and the implications of that payment and circumstances in addressing the charge of Judge Wolf in paragraph 2 of his March 8, 2017 Order."[234] The date for responding to this request was extended to November 3, 2017 to accommodate the completion of the deposition schedule.

In its November 3, 2017 Response, Lieff Cabraser again, with reference to the firm's interrogatory responses, internal documents, and deposition testimony, advised the Special Master that the firm understood Chargois to be local Arkansas counsel who played an important role in the State Street Action, a role with which the firm was generally familiar from prior experience, including in the BNY Mellon Action (on which Lieff Cabraser was lead counsel).[235] Lieff Cabraser also reminded the Special Master that it did not learn that Chargois had not served

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[231] *Id.*
[232] *Id.*
[233] Ex. 139 to Report at 95-97.
[234] Ex. K to Fineman Declaration.
[235] Ex. L to Fineman Declaration.

as local counsel, had performed no work in the State Street Action, and was not known to the client representative for ATRS until those facts came out during the depositions in September and October 2017.[236] Finally, the firm stated that at no time did Lieff Cabraser agree to "conceal" the existence of Chargois from anyone, including the Court, class members, or ERISA Counsel, either before or after the November 2016 final approval hearing.[237]

d. Expert Testimony.

On February 23, 2018 Lieff Cabraser, along with the other Plaintiffs' Counsel, received an Ethical Report for Special Master Gerald E. Rosen, prepared by Professor Gillers ("Gillers Report I").[238] In his Report I, Gillers concluded that the "Chargois Arrangement," defined by Gillers (and the Special Master) as Labaton's agreement to pay Chargois up to 20% of any attorneys' fees received by Labaton in any litigation involving an institutional investor for whom Chargois had facilitated the introduction, including ATRS, without regard to substantive work performed in a particular case, was "unethical payment for the recommendation of a client, not a valid division of [a] fee agreement."[239] Gillers went on to opine that even if the "Chargois Arrangement" could be deemed a valid division of a fee agreement, and not an improper payment for recommending a client, Labaton, Thornton and Lieff Cabraser were ethically

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[236] *Id.*

[237] *Id.*; *see also* Ex. 41 to Report at 104-105, 115-117, 119-120, 140-141. In his Executive Summary, the Special Master states, without citation to the record, that, "the Customer Class Counsel specifically agreed that the Court not be told of the allocation of fees, which meant that the Court would not be told of the Chargois arrangement,…." Executive Summary at 26. To be sure, there is no agreement, email, or any other document or testimony, in which Lieff Cabraser "specifically agreed that the Court need not be told of the allocation of fees," or that Chargois would be receiving a fee.

[238] Ex. 232 to Report.

[239] *Id.* at 33 and 58.

obligated to disclose the Arrangement to the Court and to the class under Massachusetts ethical rules.[240]

However, when confronted at his March 20 and 21, 2018 deposition with the fact that Lieff Cabraser did not know of the Chargois Arrangement until recently (*see* discussion *supra* at 49-53), Gillers recanted his opinion that Lieff Cabraser had violated any ethical rules.[241] Indeed, in his Supplemental Ethical Report for Special Master Gerald E. Rosen, dated March 8, 2018 ("Gillers Report II"), Gillers eliminated all reference to Lieff Cabraser having violated any ethical rules as to any matter under consideration by the Special Master, including concerning Chargois or the Chargois Arrangement.[242]

In response to Gillers Report I, on March 26, 2018, Lieff Cabraser offered expert reports from Professor Rubenstein and an experienced Boston, Massachusetts based attorney, Timothy Dacey, in support of the firm's position that it violated no legal or ethical rules in connection with the Chargois payment or the Chargois Arrangement.[243] In the Expert Report of William B. Rubenstein ("Rubenstein Report"), Rubenstein expressed three primary opinions: (1) Rules 23 and 54 of the Federal Rules do not require disclosure of fee allocation agreements absence judicial order, courts rarely order disclosure or involve themselves in fee allocation, and the Court in this case issued no such order; (2) Professor Gillers's attempts to advocate around the text of Rules 23 and 54 are not supported by the law; and (3) Rule 23 does not require disclosure of fee allocation agreements in the class notice.[244]

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[240] *Id.* at 66, et seq.

[241] Ex. 253 to Report at 219-222, 239-240, and 248-254.

[242] Ex. 233 to Report.

[243] Exs. 234 and 254 to Report.

[244] Ex. 234 to Report. Professor Rubenstein's extensive experience and qualifications as one of the nation's leading experts in complex class action practice are set forth in Ex. H to the

Lieff Cabraser's other expert, Dacey, is a longtime Boston trial lawyer and expert on Massachusetts ethical rules.[245] In the Expert Report of Timothy Dacey ("Dacey Report"), Dacey concluded that, based on the factual record described above, "Lieff Cabraser attorneys did not violate the Massachusetts Rules of Professional Conduct."[246] According to Dacey, to violate the duties of candor imposed by the Massachusetts ethical rules, "a lawyer must have actual knowledge that his or her statements are false or misleading. Based on the facts as I understand them, the lawyers at Lieff Cabraser lacked the requisite state of mind to establish a violation of these Rules."[247]

Between March 20 and April 20, 2018, nine expert witnesses proffered by the parties, including Gillers, Rubenstein and Dacey, were deposed.[248] Rubenstein and Dacey were deposed on April 9, 2018.[249] Their testimony was in all material respects consistent with their expert reports.[250]

e. <u>April 5, 2018 Submission.</u>

On March 25, 2018, the Special Master requested from Lieff Cabraser "any evidence… identif[ied] in the record, or evidence… not currently in the record" relating to Lieff Cabraser's "state of mind" as to the issue of [Chargois's] role in the State Street litigation prior to

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Fineman Declaration at 3-7, and A1-A18. Rubenstein is the author of the definitive text on class action practice, *Newberg on Class Actions* (5th ed.)(2015).

[245] Dacey, who has practiced for 48 years at the Boston firms of Hill & Barlow, LLP and Goulston & Storrs, P.C., has been a member of the Committee on Professional Ethics of the Massachusetts Bar Association since 1984 and Vice-Chair of the Committee since 1991. In addition, since 2012, Dacey has been a member of the Massachusetts Advisory Committee on the Rules of Professional Conduct, and a lecturer at Harvard Law School where he teaches a course that focuses on the rules of professional conduct. Ex. 244 to Report.

[246] *Id.* at 18.

[247] *Id.* at 1.

[248] *See* Appendix C.

[249] Exs. 235 and 237 to Report.

[250] Exs. 234, 235, 237 and 244 to Report.

September 7, 2017.[251] Even though the record was already full of evidence of the firm's "state of mind" regarding Chargois, on April 5, 2018, Lieff Cabraser submitted a Response to the Special Master's March 25 request.[252] That Response included specific references to the deposition testimony of Lieff and Chiplock concerning their understanding that Chargois was local Arkansas counsel for Labaton and ATRS; that Chargois had played an important role in the litigation; that they assumed his role as local counsel was comparable to the role played by local counsel in the BNY Mellon Action; and, that there was nothing unreasonable or unusual about local counsel receiving approximately 5% of an aggregate fee in a large financial fraud case.[253] Along with the Response were original declarations from Chiplock and Lieff again confirming their, and the firm's, understanding of Chargois' role in the State Street Action.[254]

5. The Final Hearing Before the Special Master.

On April 13, 2018, at the JAMS office in Boston, the Special Master conducted a full-day hearing and oral argument concerning his investigation ("Final Hearing").[255] Lieff Cabraser's presentation at the final hearing was consistent with the facts set forth in this Response and Objections.[256]

During the hearing, the Special Master inquired of Lieff Cabraser's Heimann whether the firm wished for the Master to recommend "remedial action" in the nature of payment (or repayment) from Labaton and/or Thornton to Lieff Cabraser because the firm was not fully and

[251] Ex. M to Fineman Declaration.
[252] Ex. N to Fineman Declaration.
[253] *Id*.
[254] *Id.*
[255] Ex. 162 to Report.
[256] *Id.* at 219-307.

accurately apprised of the Chargois Arrangement by its colleagues.[257] Heimann responded that although the firm was "not happy that we weren't fully informed in real-time about the Chargois [Arrangement] and that we ended up paying a very large sum of money to him that we probably would have had some serious questions about had we been fully informed," in light of the firms' longstanding "good relationship" with Labaton and Thornton, and because Lieff Cabraser did not agree with the apparent position of the Special Master regarding Labaton's failure to disclose the payment to Chargois to the Court or the class, the firm declined to request such payment (or repayment).[258]

I. The Special Master's Report And Findings Relevant and Specific To Lieff Cabraser.

On May 14, 2018, the Special Master filed under seal and served on Plaintiffs' Counsel, including Lieff Cabraser, a 54 page Executive Summary, and a 377 page Report. After hearing from the parties on proposed redactions to the Report, the Court put the Executive Summary and Report in the public docket on June 28, 2018.[259]

The Special Master's key findings in the Report relevant or specific to Lieff Cabraser are as follows:

- *The Special Master acknowledges the risks, difficulties and challenges of the State Street Action, the skill and dedication of Plaintiffs' Counsel, and the outstanding accomplishment of the settlement:*

> After much work, dedication and exceptional effort in the discovery and mediation process, the parties ultimately reached a $300 million settlement. Given the risks, complexities and legal challenges inherent in the litigation, it must be said that the $300 million settlement, procured by

[257] *Id.* at 271-272.

[258] *Id*. at 272-274.

[259] ECF No. 357 and 357-1.

> skilled and dedicated plaintiffs' counsel, was an excellent result for the class.[260]
>
> * * *
>
> By all accounts, the class settlement provided an excellent result for the class members and was a product of the highly dedicated and professionally skilled work of the class'[s] law firms, a view with which the Special Master fully agrees.[261]

- *The Special Master finds the fee awarded to Plaintiffs' Counsel was appropriate based on the work performed and the result achieved:*

> The Court approved the settlement on November 2, 2016. Of the $300 million, plaintiffs' counsel were awarded $74,541,250.00 in attorneys' fees and $1,257,699.94 for expenses. By itself, this attorney fee award was not disproportionate or unsupportable when measured against the positive result for the class and the attorneys' effort and skill that was required to achieve it. Indeed, all other things being equal, the attorneys' fee award was fair, reasonable and deserved.[262]

- *The Special Master concludes that the hourly rates for, and the number of hours worked by, Lieff Cabraser's attorneys, including its staff attorneys, were reasonable and accurate:*

> The lodestar reports of Plaintiffs' Counsel charged partners at hourly rates ranging from $535 to $1000, and associates at hourly rates of $325 to $725 [footnote omitted]. As discussed below, we conclude that these rates are commensurate with partner and associate rates charged and approved in similarly complex class actions, and therefore are reasonable.[263]
>
> * * *
>
> The Special Master recommends that, for the reasons summarized above and set forth in great detail in the Report, with the minor exceptions noted herein, the Court find that the hours and rates of the attorneys of each of the law firms for whom lodestar reports were submitted to the Court are reasonable and accurate, and consistent with applicable market rates for comparable attorneys in comparable markets for comparable work. This

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[260] Executive Summary at 3, Report at 6.

[261] Executive Summary at 7, Report at 125; *see also*, Report at 151-156 (discussing the complexity and challenges plaintiffs' counsel faced and the experience required to successfully assert the FX trading claims alleged in the State Street Action).

[262] Executive Summary at 3, Report at 6.

[263] Report at 164 and 176.

includes the hours and rates for the excellent work performed by the staff attorneys employed by Labaton and Lieff.[264]

* * *

The fact that they were designated as "staff attorneys" or that they were tasked with "document review" should not indicate the work they did was routine or "paralegal" in nature. Both the work they performed and their professional qualifications and experience established them as more akin to lower-level and mid-level associates.[265]

* * *

The staff attorneys at the Labaton and Lieff firms did much more than "low-level" document review. The staff attorneys not only did first-level document review; they also digested complex information and prepared very detailed, substantive legal memoranda on issues that Customer Class Counsel wanted to explore in depositions once witnesses were identified and also on areas that would require follow-up discovery and document discovery if the mediation were to end without a resolution.[266]

* * *

Contrary to the picture painted in the *Boston Globe* article, with the exception of Michael Bradley, whose work is discussed below, these staff attorneys did much more than "low level" document review. As noted, they all were attorneys with years of experience, and the majority of them had specialized knowledge or skills in FX/securities areas. A number of them had worked on BONY Mellon which raised similar issues to those in the *State Street* case. They all made substantive contributions to the case. They did not simply do first-level document review; they also digested complex information and prepared topical memoranda and witness memoranda for depositions – the same kind of work done by associates at large firms. Rather than referring to them as staff attorneys, it would be more accurate to refer to them as "non-partnership-track" attorneys.[267]

The *Boston Globe* article also took issue with the staff attorneys' billing rates as compared to what the staff attorneys were actually *paid*. The article reported that these attorneys were paid only $25 to $40 an hour. In fact, the vast majority of the staff attorneys were paid in the range of $40-$60 an hour, plus benefits. More importantly, there is nothing impermissible about marking up an attorney's billing rate above "cost" so

[264] Executive Summary at 21-22 and 49-50, Report at 365-366.

[265] Report at 70-71.

[266] Report at 72.

[267] Executive Summary at 22, Report at 176-177.

> long as the rate at which the attorney is billed is reasonable and commensurate with experience and the value of the work performed.[268]
>
> * * *
>
> The Special Master concludes the staff attorney billing rates in the lodestar fee petition are generally reasonable given that the staff attorneys were responsible for some 70% of the work billed on the case. These rates are particularly reasonable when compared to the relatively low number of hours billed by associates for the three Customer Class law firms (less than 2% of the total time billed). This can be attributed to the fact that the staff attorneys effectively did the work of lower- to mid-level associates. Thus, for purposes of the analysis here, the Special Master views the staff attorney work as associate-level work.[269]

- *The Special Master finds contemporaneous time records of Lieff Cabraser's attorneys, including its staff attorneys, to be sufficiently and reliably detailed:*

> Lieff used a comparable electronic time keeping system to maintain accurate and contemporaneous time records for its attorneys.[270]
>
> * * *
>
> As described below, based on our review of the individual as well as firm-wide time entries recorded in this case, the time records produced by the firms participating in the *State Street* case sufficiently and reliably detail the firms' substantive, legal contributions to that case.[271]
>
> * * *
>
> Aside from the reasonableness of the aggregate tally, we conclude that the hours presented on the Fee Petition are reasonable for three additional reasons. First, the firms appropriately staffed the case, assigning lawyers to specific tasks commensurate with their experience and capabilities with a sensitivity to the costs ultimately passed on to the client, the class, through the common fund. Thus, the hours expended by each individual attorney accurately reflect the nature of the work assigned to him or her. Second, the narratives in the time records themselves capture the precise nature of these substantive contributions in detailed – and in some

[268] Report at 177.

[269] Report at 180.

[270] Report at 203.

[271] Report at 209.

> instances highly detailed – descriptions of the legal work performed within the individual records.[272]
>
> * * *
>
> Billing entries of Lieff attorneys, moreover, sufficiently conveyed the nature of the work – whether emails, meetings, drafting or reviewing – along with the salient details, such as with whom and the basic substance of each task.[273]
>
> * * *
>
> While we recognize the danger that Lieff, as Co-Lead Counsel in the *BONY Mellon* case, could include hours in the *State Street* lodestar expended in litigating the *BONY Mellon* case or other FX matters, we conclude that Lieff did not do so here. All the hours submitted by Lieff in its *State Street* hours bear, directly or indirectly, on the legal issues presented in the *State Street* case.[274]

- *The Special Master finds Plaintiffs' Counsel's aggregate lodestar multiplier of 1.8 to be "certainly within the reasonable range" for purposes of a lodestar cross-check:*

> In performing a lodestar cross-check on a proposed percentage-of-fund fee award, a lodestar multiplier is used. A lodestar multiplier is determined by dividing the proposed percentage-of-fund award by the total lodestar [citation omitted]. In the instant matter, plaintiffs' counsel's combined lodestar was $41,323,895.75. Dividing the proposed fee of 25% of the total fund, $300,000,000.00, by the lodestar yields a multiplier of 1.8.
>
> A 1.8 multiplier is certainly within the reasonable range [citing cases that supported multipliers of 2.02, 3.0, 1.987, 2.7, 3.5 and up to 4.0].[275]

- *The Special Master concludes that Lieff Cabraser's double-counting was "inadvertent," and that Lieff Cabraser's conduct was a lesser part of the cause of the investigation:*

> Each of the three firms bears different degrees of responsibility for the double-counting and, accordingly, the firms' respective roles are addressed *seriatim* here.
>
> Lieff… has acknowledged that it made a mistake in claiming the hours of the staff attorneys and agency attorneys loaned to Thornton on its lodestar.

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[272] Report at 210.

[273] Report at 211.

[274] Report at 212.

[275] Report at 245-246.

> Contemporaneous evidence also indicates that Lieff anticipated that [certain of] its staff attorneys would be included on Thornton's petition. Notwithstanding this error, Lieff's responsibility for the actual double-counting is somewhat mitigated because it never saw the lodestar reports of Thornton or Labaton in order to be able to compare, and possibly catch, the double-counting. Lieff had, early in this litigation, agreed to the "loaning" of [certain of] its staff attorneys and agency attorneys to Thornton as a means of sharing the costs and risks of employing these attorneys and the litigation as a whole. While the agreement to "loan" the staff and agency attorneys to Thornton was, perhaps, an ill-considered judgment since the cost-sharing of this case could have been achieved in other ways, it cannot be said that the agreement to share costs through this mechanism was a significant cause of the double-counting. Thus, while Lieff bears some responsibility for the double-counting misstatements, and thereby the attendant cost of the Special Master's investigation, its conduct was inadvertent.[276]

- *The Special Master recommends that Lieff Cabraser "disgorge" one-third of the total double-counted staff attorney lodestar and that the money be "returned" to the class:*

> All three customer class firms will share responsibility. The remedy for this is the disgorgement in equal amounts of the entire $4,058,000 in double-counted time. It is recommended that this entire amount be returned to the class.[277]

- *The Special Master recommends that the time of Lieff Cabraser's staff attorneys paid by an agency be treated as a cost item, instead of including that time in the firm's aggregate lodestar:*

> The law firms should 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 the law firms as an expense, and the firms compensated for that expense dollar-for-dollar.[278]

- *The Special Master recommends that Lieff Cabraser "disgorge" the difference between (a) the total of the firm's "agency" attorneys' lodestar, times 1.8, and (b) $50 per hour for the agency lawyers' time:*

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[276] Executive Summary at 14-15; Report at 363.

[277] Executive Summary at 49, Report at 364. Lieff Cabraser's objection to this recommendation by the Special Master is presented *infra* at 67-77.

[278] Executive Summary at 22-23 and 50, Report at 367; *see also*, Report at 181-189. Lieff Cabraser's objection to this recommendation by the Special Master is presented *infra* at 77-90.

> The seven contract attorneys, all retained by Lieff, recorded 2,833.5[279] hours in this role at rates varying between $415 and $515. The total billings for contract attorneys was approximately $1.3 million ($1,325,588). In addition, a multiplier of 1.8 was added to their hours and rates, yielding a total award of $2.4 million ($2,386,058) for the time of the contract attorneys. This amount should be disgorged and returned to the class. The Customer Class Counsel is, however, entitled to claim the contract attorneys as an expense calculated at a more reasonable more rate of $50/hour. The Special Master recommends the difference between these two figures also be awarded to the class.[280]

- *The Special Master finds that Lieff Cabraser was not aware of the Chargois Arrangement, and justifiably believed Chargois to be Labaton's local counsel, and therefore bears no responsibility for the Chargois episode and recommends the firm be relieved from any further responsibility relating to Chargois under of the claw-back agreement:*

> Labaton even failed to fully inform its Customer Class co-counsel [including Lieff Cabraser], who were sharing equally in the $4.1 million payment to Chargois, of Chargois' actual role (or lack of a role) in the *State Street* case.[281]
>
> * * *
>
> Lieff and Thornton were not privy to the origins of the Chargois Arrangement or the details of Labaton's obligation to pay Chargois in all cases in which ATRS was a co-lead counsel.[282]
>
> * * *
>
> Beyond this, when [Labaton] sought to have Lieff and Thornton share in the obligation to Chargois by splitting equally the $4.1 million payment to him, they told them only a portion of the story, leading them to believe that Chargois was local counsel and performing work of value in the case.[283]

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[279] As noted above, this correct number would appear to be 2899.2.

[280] Report at 367-368. A similar recommendation is contained in the Special Master's Executive Summary, but certain of the dollar figures cited there are different than those cited in the Report and are incorrect. Executive Summary at 50. Lieff Cabraser's objection to this recommendation by the Special Master is presented *infra* at 90-96.

[281] Executive Summary at 26.

[282] Report at 106, 287-289, 301-302.

[283] Report at 331; *see also* Report at 350-351; Report at 109-113 (summarizing Lieff Cabraser's lack of knowledge of the Chargois Arrangement, and its justifiable belief that Chargois was serving at local Arkansas counsel for Labaton on behalf of ATRS).

* * *

> On the one hand, Lieff agreed to share in the Chargois payment and at least knew about Chargois, albeit not the full state of affairs. On the other hand, the Special Master believes that Lieff was misled into agreeing to share in the Chargois payment. Ordinarily, some recompense would be in order for this. However, at oral argument, Lieff's counsel (and the firms' General Counsel), Richard Heimann, when asked what if any relief he was seeking, indicated he was not looking for any repayment…. In view of all these factors, the Special Master believes that the fairest result for the Lieff firm would be for it to be relieved of its obligations to Labaton under the claw-back letter as to Chargois, but no more.[284]

- *The Special Master concludes that even after his recommended monetary "remedies" are imposed on Lieff Cabraser, the firm will still have received as a fee its base lodestar plus a significant multiplier*:

> [E]ven after the imposition of the monetary remedies recommended here… Lieff… will still be left with not only their base lodestar claim, but a substantial multiplier. The Special Master calculates that even after the allocation all monetary amounts, and the cost of the investigation, the Customer Class Firms will still receive its [sic] base lodestar plus a significant multiplier.[285]

J. The Actual and Potential Costs To Lieff Cabraser Of The Special Master's Investigation.

Consistent with the firm's fee interest in the State Street Action relative to the other Customer Class Counsel, Lieff Cabraser has borne 24% of the direct costs of the Special Master's investigation. *See* discussion *supra* at 41. In other words, Customer Class Counsel have paid a total of $3,800,000 to fund the Special Master's investigation ($500,000 of which has been paid for future work, if any, by the Special Master and his counsel and/or advisors), and Lieff Cabraser's 24% share of that total paid is $912,000.

In addition to the amount of money it has paid to finance the Special Master's investigation, Lieff Cabraser has also incurred an additional $428,715 in costs to represent and

[284] Report at 352. Lieff Cabraser's response to this recommendation by the Special Master is presented *infra* at 96-98.

[285] Report at 376. Lieff Cabraser's objection to this finding by the Special Master is presented *supra* at 6, *infra* at 64-66, and 99.

defend itself during the investigation. This figure includes the costs of three expert reports from Rubenstein; one expert report from Dacey; frequent air travel from San Francisco to New York and Boston for Heimann, and his attendant accommodation expenses; travel from New York to Boston and related accommodation expenses for Chiplock; travel from San Francisco to New York of five Lieff Cabraser staff attorneys (for their depositions), along with related hotel expenses; and miscellaneous other related litigation costs.[286]

Lieff Cabraser's representation of itself during the Special Master's investigation has involved a substantial amount of time from firm partners Heimann, Fineman and Chiplock, along with additional time from Lieff Cabraser support staff. The aggregate lodestar devoted to the Special Master's investigation, from February 6, 2017 through the date of this Response and Objections, is $1,963,110 (calculated at 2018 hourly rates).[287] Therefore, the total cost to the firm resulting from the Master's investigation (to date) is $3.30 million.

In addition to that extraordinary figure, the Special Master now recommends that Lieff Cabraser "disgorge" from its fee award an additional $3,593,765, reflecting (i) an equal share of Customer Class Counsel's aggregate inadvertently double-counted lodestar ($1,352,667), plus (ii) the difference between (a) the lodestar attributed (for cross-check purposes) to Lieff Cabraser's "agency" staff attorneys, plus a 1.8 multiplier on that lodestar, and (b) $50 per hour for each hour[288] worked by those "agency" attorneys, or $2,241,098.40.

As noted above, the firm received $15,116,965.50 in attorneys' fees (reflecting its 24% interest in fees allocated to Customer Class Counsel and 20.3% of the total fee awarded to Plaintiffs' Counsel). *See* discussion *supra* at 41. Based on its corrected lodestar figures (i.e.,

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[286] *See* Exhibit O to Fineman Declaration.

[287] *See* Fineman Declaration at ¶ 18.

[288] Again, as noted above, the firm uses the correct contract attorney hourly total of 2899.2 for this calculation.

subtracting $868,417.00 in inadvertently double-counted staff attorney lodestar, resulting in a total lodestar of $8,932,070.50), Lieff Cabraser's *corrected* effective multiplier on its individual fee was 1.69 – substantially less than the aggregate multiplier averaged across all counsel, and indeed less than the 1.8 aggregate lodestar multiplier that the Court *originally found to be reasonable*. *See* discussion *supra* at 35.

When subtracting from the firm's fee award the $912,000.00 it has paid to date toward the Special Master's investigation, the firm's award is reduced to $14,204,965.50, resulting in a lowered effective multiplier of just 1.59 on the firm's corrected lodestar. And after deducting from the firm's fee award the additional costs and lodestar the firm has spent on the investigation, Lieff Cabraser's effective fee award is reduced to $11,813,140.50, for a reduced multiplier of just 1.32. If, after all of that, the Special Master's recommendations for the "disgorgement" of $3,593,765 of Lieff Cabraser's fees is also implemented, the firm's fee award would be further reduced to $8,219,375.50, for an end multiplier of *0.92* – i.e., a *negative multiplier*, meaning that Lieff Cabraser would not even be recovering what it has put into the litigation.[289]

As argued below, the financial impact on Lieff Cabraser of the Special Master's recommendations is entirely unjust in light of the factual record, the Special Master's actual substantive findings, and the application of controlling legal principles.

[289] According to the firm's calculations, Lieff Cabraser would be alone, among all of the firms involved in the litigation, in obtaining a negative effective multiplier if the Special Master's recommendations were fully adopted. On the other end of the spectrum, one of the ERISA Counsel (Zuckerman Spaeder) would obtain an effective individual multiplier of more than 3.0 if the Special Master's recommendations were fully adopted.

III. ARGUMENT IN SUPPORT OF LIEFF CABRASER'S OBJECTIONS TO THE SPECIAL MASTER'S REPORT.

A. The Court Must Review Objections To The Special Master's Findings, Conclusions, And Recommendations *De Novo*.

The Special Master was appointed pursuant to Rule 53 of the Federal Rules. Under Rule 53(f)(3) and (4), a court must decide *de novo* all objections to findings of fact and/or conclusions of law made or recommended by a master. Accordingly, this Court will review objections to the Special Master's findings, conclusions and recommendations *de novo*.[290] Based on an independent review of the factual record and controlling case law, the Court should sustain Lieff Cabraser's following objections to the Special Master's findings, conclusions, and recommendations.

B. Lieff Cabraser Should Not Be Required To Disgorge Any Portion Of The Firm's Inadvertently Double-Counted Lodestar.

The Special Master recommends that Customer Class Counsel, including Lieff Cabraser, disgorge and "return" to the class in equal amounts the $4,058,000 in double-counted staff attorney time.[291] Lieff Cabraser objects to this recommendation by the Special Master, and urges the Court to reject it, for the following reasons: (1) the double-counting of certain staff attorney time was inadvertent; (2) the Special Master's recommendation miscomprehends or ignores the limited "cross-check" purpose for which lodestar was submitted and used in the State Street Action; (3) the inadvertent double-counting caused no harm to the class; and, (4) Customer Class Counsel, including Lieff Cabraser, has already been penalized for the double-counting.

[290] Ex. 163 to Report, ECF No. 173, at 12 (this Court stating that it will review *de novo* any recommended findings of facts and conclusions of law as to which Plaintiffs' Counsel object).

[291] Executive Summary at 49, Report at 364.

1. The Double-Counting of Certain Staff Attorney Time Was Inadvertent.

As the Special Master notes, the "hot button issue" that triggered the Special Master's investigation was the discovery of the double-counting of certain staff attorney lodestar.[292] Indeed, a substantial portion of the pre-Chargois investigation by the Special Master addressed the double-counting issue. *See* discussion *supra* at 43-49. After they explained the accidental nature of the double-counting in numerous interrogatory responses, through thousands of pages of produced internal documents, and in informal interviews and sworn depositions, the Special Master agreed with Customer Class Counsel, including Lieff Cabraser, that the double-counting was "inadvertent."[293]

2. The Special Master's Recommendation Miscomprehends or Ignores the Limited "Cross-Check" Purpose of the Submission and Use of Lodestar in this Action.

Despite the inadvertence of the double-counting, the Special Master recommends that Customer Class Counsel "return the $4,058,000 in double-counted time to the class."[294] As explained below, there is no "time" or lodestar to "return" to the class. Plaintiffs' Counsel, including Lieff Cabraser, were not paid by the class on an hourly basis, and did not somehow charge for work that was not performed. Rather, Plaintiffs' Counsel were compensated on a percentage-of-the-fund basis with Counsel's lodestar submitted solely for cross-check purposes. The Special Master's proposed "remedy" belies either a miscomprehension or a disregard of the purpose of the use of lodestar in the State Street Action.

As the Court ruled, and as the Special Master acknowledges, Plaintiffs' Counsel's fees in the Action were awarded on a percentage-of-the-fund basis, with a lodestar cross-check. *See*

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[292] Report at 219.

[293] Executive Summary at 14-15, Report at 363.

[294] Executive Summary at 49, Report at 364.

discussion *supra* at 34-36, 57-61. The Court ruled that a percentage-of-the-fund fee of approximately 25% was consistent with First Circuit authority and the Court's own practices in large complex cases. *See* discussion *supra* at 34-36. The Special Master acknowledges the propriety of a 25% contingent fee, subject to a lodestar cross-check, and acknowledges the reasonableness of the aggregate fee award to Plaintiffs' Counsel. *See* discussion *supra* at 57-61.

Plaintiffs' Counsel did not seek, and the Court did not award Counsel's fees, based on the very different lodestar-multiplier method. *See* Declaration of William B. Rubenstein in Support of Lieff Cabraser Heimann & Bernstein, LLP's Responses and Objections to the Special Master's Report and Recommendations, dated June 20, 2018 and filed herewith ("Rubenstein Declaration II"), at 18 ("The Special Master's Report errs in recommending these remedies as it confused the nature of a lodestar cross-check, applied in this case, with a lodestar-based fee, not at issue here."); *see also* Rubenstein Declaration I at 7-12[295] and Rubenstein Declaration II at 19-20 (describing the difference between the percentage method and the lodestar method of awarding attorney's fees in class actions).

The purpose of a lodestar cross-check against a percentage-of-the-fund fee request is clear – a lodestar cross-check is performed solely for the purpose of determining that a percentage-of-the-fee award is reasonable and not excessive. *See e.g.*, *In re Tyco Intern. Ltd. Multidistrict Litigation*, 535 F.Supp.2d 249, 270 (D.N.H. 2007) (lodestar cross-check used to determine whether the percentage of the fund fee award is "reasonable," and whether the "fee award appropriately reflects the degree of time and effort expended by the attorneys"); *In re Citigroup, Inc. Securities Litigation*, 965 F.Supp.2d 369, 388 (S.D.N.Y. 2013) ("Part of the reasonableness inquiry is a comparison of the lodestar to the fees awarded pursuant to the

[295] Ex. H to Fineman Declaration.

percentage of the fund method [as a cross-check]"); *see also* Rubenstein Declaration I at 10 ("[U]sing a lodestar cross-check enables a court to make a rough estimate of counsel's lodestar for the sole purpose of ensuring against a windfall")[296]; Rubenstein Declaration II at 19 ("Since the early 1990s, most courts have used the percentage method in large common fund cases like this one, although about half the courts that do so ensure that the percentage that is awarded is not too great by 'cross-checking' it against counsel's lodestar").

Unlike the level of detail required to support a lodestar-based fee, however, a lodestar cross-check is more summary in nature. *See e.g., Tyco*, 535 F.Supp.2d at 273 ("'The lodestar cross-check calculation need entail neither mathematical precision nor bean-counting.'" (quoting *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 306 (3rd Cir. 2005), as amended (Feb. 25, 2005))); *New England Carpenters Health Benefits Fund v. First DataBank, Inc.*, No. 05-CIV-11148 (PBS), 2009 WL 3418628, at *1 (D.Mass. October 20, 2009) (determining that lodestar is enough of a cross-check on the percentage method; a full audit of all attorneys' fees and costs is too "cumbersome, time-consuming and resource intensive"); William B. Rubenstein, Newberg on Class Actions (5th ed.) (2015) at §15:86 (collecting cases, including from the First Circuit, for the summary nature of the lodestar cross-check).

In the State Street Action, Plaintiffs' Counsel submitted lodestar reports for the purpose of allowing the Court to conduct a lodestar cross-check against a percentage-of-the-fee award. *See* discussion *supra* at 32-34. The combined lodestar submitted by Plaintiffs' Counsel in connection with their fee application was $41,323,895.75 based on 86,113.70 hours worked. *See Id*. In cross-checking Plaintiffs' Counsel's aggregate lodestar against an approximately 25% contingent fee of $74,541,250.00, the Court found, and the Special Master later agreed, that the

[296] Ex. H to Fineman Declaration.

aggregate multiplier of 1.8 was well within the range of what is reasonable under applicable legal authority. *See* discussion *supra* at 34-36, 57-61.

In the November 10, 2016 Goldsmith Letter, Customer Class Counsel acknowledged the inadvertent double-counting error and advised the Court that approximately $4.06 million of lodestar should be removed from the aggregate lodestar the Court used to perform a cross-check against the 25% percentage-of-the-fund fee award. *See* discussion *supra* at 39. The aggregate corrected lodestar figure was accurately reported in the Goldsmith Letter, and is the number that has been adopted by the Special Master in his Report. *See* discussion *supra* at 39, 48. In the Goldsmith Letter and throughout the investigation, Customer Class Counsel has pointed out to the Special Master that: removing the double-counted lodestar from the aggregate lodestar of $41,323,895.75, results in a corrected aggregate lodestar of $37,265,241.25; that applying the corrected lodestar as a cross-check against the aggregate fee awarded ($74,541,250) results in a 2.0 multiplier; and, that such a multiplier, used for lodestar cross-check purposes, is reasonable under controlling legal authority. *See* discussion *supra* at 41-49, 64-66.

In his Report, the Special Master found the aggregate lodestar multiplier of 1.8 (the lodestar multiplier based on the original fee submissions) to be "certainly within the reasonable range," and cited as support for that statement cases that applied multipliers of 2.02, 3.0, 1.987, 2.7, 3.5 and up to 4.0. *See* discussion *supra* at 61. The Special Master does not attempt to explain why a 1.8 multiplier is clearly reasonable, but a 2.0 multiplier is not. That is because he cannot.

Controlling case law clearly supports multipliers of 2.0 or more as well within the range of reasonableness for lodestar cross-check purposes. *See* Ex. 110 to Report, ECF No. 103-1, at 24-25 (collecting and reporting to the Court First Circuit "megafund" settlements in which

lodestar multipliers in a range of 2.7 to 8.3 were approved for cross-check purposes); Rubenstein Declaration I at 30 ("Quantitatively, a 2 multiplier is consistent with multipliers that courts have previously approved in similar circumstances"), and 33 ("Nothing about the unfortunate miscalculation in Counsel's time-keeping displaces this conclusion [that a 2.0 multiplier is appropriate], as the change in the proposed multiplier is simply from 1.8 to 2.")[297]; Rubenstein Declaration II at 19-20 ("[C]orrecting the double-counting issue by reducing counsels' lodestar adjusted their multiplier from 1.8 to 2.01, which in the context of this case was insignificant.").

The Special Master cites no case law, or any other legal principle, to support his proposed remedy that Customer Class Counsel, including Lieff Cabraser, "return" the amount of the inadvertently double-counted lodestar to the class. That is because none exists. Indeed, as Professor Rubenstein observes: "In a case where a court employs the percentage method to determine class counsels' fee, and used the lodestar only for cross-check purposes, the reduction of an hour of time recalibrates the lodestar multiplier and requires further analysis of whether that lower amount can continue to sustain the requested percentage award. But it does not require the 'repayment' of that hour of time since counsel was never 'paid' for that hour of time; counsel were paid a percentage of the recovery." *See* Rubenstein Declaration II at 20-21 (also citing "[numerous] legal decisions [that] have understood this distinction, after adjusting the lodestar used for cross-check purposes downward, simply re-assessed whether the resulting higher multiplier remained reasonable).

Given the purpose of the consideration of lodestar for cross-check purposes, and in light of the inadvertent nature of Customer Class Counsel's double-counting of certain staff attorney time, the proper way to address the double-counting issue is simply to remove the double-

[297] Ex. H to Fineman Declaration.

counted lodestar from the aggregate amount of lodestar used in the cross-check of the 25% percentage-of-the-recovery fee. The Court can then determine whether or not the resulting aggregate multiplier is appropriate. Lieff Cabraser submits that it is, particularly in view of the fact that its *individual* corrected multiplier – 1.69 – is lower even than the original, uncorrected 1.8 aggregate multiplier that both the Court and the Special Master found to be reasonable (and, as explained *supra* at 64-66, the firm's post-investigation multiplier is substantially lower still).

3. In Recommending "Return" of the Double-Counted Lodestar to the Class, the Special Master Identifies No Harm to the Class that Justifies Such a "Remedy".

Both the Court and the Special Master have found that the $300 million settlement Plaintiffs' Counsel achieved on behalf of the class was an "excellent result," particularly in light of the uniquely difficult risks and challenges presented by the novel legal theories advanced by Plaintiffs' Counsel, and given the skill and resources of State Street's attorneys. *See* discussion *supra* at 34-36, 57-61. The class therefore received exactly what it was notified it would receive, and what it unanimously agreed to. The Special Master recognizes that the class received significant economic benefits as a consequence of the "highly dedicated and professionally skilled work of the class' law firms." *See* discussion *supra* at 57-61. Prior to final approval, class members were informed of the financial benefits they would receive from the settlement, and were told that class counsel would seek a fee up to approximately 25% of the amount recovered. *See* discussion *supra* at 32. Not a single member of the highly sophisticated class of institutional investors opted out of the certified settlement class or objected to the settlement or to the proposed fee award. *See* discussion *supra* at 34-36.

Based on Plaintiffs' Counsel's accomplishment for the benefit of the class, and applying applicable First Circuit authority, the Court awarded approximately 25% of the recovery as fees.

See discussion *supra* at 34-36. Having nothing whatsoever to do with the quality of Plaintiffs' Counsel's lawyering or the results achieved for the class, Customer Class Counsel accidentally, inadvertently, without intention, double-counted a small portion (9.8%) of the aggregate lodestar submitted to the Court as part of the lodestar cross-check exercise. The prompt correction of that error resulted in the lodestar multiplier increasing from 1.8 to 2.0 – well within the range of reasonableness measured against the 25% percentage-of-the-recovery fee awarded to Counsel.

Under these facts – and these are *the* facts – the class has suffered *no* harm as a consequence of the inadvertent double-counting, and has received substantial benefits as a result of the risks taken and the legal skills applied by their attorneys. The Special Master identifies no harm suffered by the class as a consequence of the double-counting that justifies his unnecessary recommended "remedy."

4. Customer Class Counsel, Including Lieff Cabraser, Has Already Suffered Financially as a Consequence of the Inadvertent Double-Counting.

The Special Master states that "Lieff bears some responsibility for the double-counting misstatements, and thereby the attendant cost of the Special Master's investigation,…"[298] Indeed, Customer Class Counsel, including Lieff Cabraser, has already suffered a meaningful financial burden as a consequence of their inadvertent double-counting of certain staff attorney lodestar by paying for the "attendant cost of the Special Master's investigation." *See* discussion *supra*, at 64-66. It would be entirely unjust for the Court to require Customer Class Counsel, including Lieff Cabraser, to pay more than they already have for the inadvertently double-counted lodestar.

[298] *See* Executive Summary at 15.

C. In The Event The Court Requires Lieff Cabraser To Disgorge Any Portion Of The Firm's Inadvertently Double-Counted Lodestar, That Disgorgement Should Be Commensurate With The Firm's "Relative" Role In The Double-Counting.

As stated above, Lieff Cabraser objects to the Special Master's recommendation that Lieff Cabraser disgorge any portion of its inadvertently double-counted lodestar. Such an outcome is not supported by the law or the facts. However, in the event the Court overrules Lieff Cabraser's objection, the firm further objects to the Special Master's recommendation that the appropriate remedy is "disgorgement by all three firms in equal amounts" of the $4,058,000 in double-counted time. Lieff Cabraser objects to the recommendation that it should pay one-third of that amount, $1,352,667, because such an outcome is inconsistent with the factual record and the Special Master's own substantive findings.

To the extent the Court entertains the Special Master's recommendation that Lieff Cabraser should disgorge some portion of that lodestar, the following facts must be recognized:

- Lieff Cabraser received 24% of the fee award allocated to Customer Class Counsel and has paid 24% of the court-ordered costs for the Special Master's investigation ($912,000 of $3.8 million). *See* discussion *supra* at 64-66;
- the portion of the double-counted lodestar actually attributable to Lieff Cabraser was $868,417, or just 21% of the total double-counted lodestar (*see* discussion *supra* at 3, 38, 64-66); and,
- the portion of the double-counted lodestar attributable to Lieff Cabraser ($868,417), is only 2% of the total aggregate lodestar originally submitted to the Court (*see* discussion *supra* at 64-66).

Based just on these basic facts, Lieff Cabraser should not be obliged to disgorge 33-1/3% of the inadvertently double-counted time. Rather, given the relatively modest amount of its double-counted lodestar, it should have to pay substantially less than that, subject to further reduction based on the Special Master's factual findings, described below.

The Special Master's recommendation that Lieff Cabraser disgorge an equal amount of the double-counted lodestar is inconsistent with the relevant findings in his Report. The Special Master describes the "relative responsibility" of Lieff Cabraser, Thornton and Labaton for the double-counting, pointing out that "each of the three Customer Class law firms bears widely varying degrees of responsibility," and "[e]ach of the three firms bears different degrees of responsibility for the double-counting."[299] The Special Master finds that "Lieff's responsibility for the actual double-counting is somewhat mitigated because it never saw the lodestar reports of Thornton or Labaton in order to be able to compare, and possibly catch, the double-counting."[300] The Special Master also acknowledges that "it cannot be said that the agreement to share costs" through the sharing of certain staff attorneys with Thornton was a "significant cause of the double-counting."[301] The Special Master concludes that "while Lieff bears *some* responsibility for the double-counting misstatements, and thereby the attendant cost of the Special Master's investigation, its conduct was inadvertent." (Emphasis added.)[302]

The Special Master goes on to compare Lieff Cabraser's relatively minor (i.e., "some") share of responsibility for the double-counting with Thornton's "significant responsibility for the double-counting"[303] and Labaton's "ultimate responsibility" for the same.[304] Despite weighing the relative roles of the firms in the inadvertent double-counting and finding Lieff Cabraser the least responsible, the Special Master nevertheless, and inconsistently, recommends

[299] Executive Summary at 10, 13 and 14.
[300] Executive Summary 14.
[301] Executive Summary at 14-15.
[302] Executive Summary at 15 (emphasis added).
[303] Executive Summary at 15-18.
[304] Executive Summary at 18-19.

"disgorgement in equal amounts" of the double-counted lodestar.[305] The Special Master's recommendation that Lieff Cabraser disgorge an equal amount of the double-counted lodestar is fundamentally at odds with the Master's own findings and should be rejected.[306]

Based on the firm's limited financial stake in the State Street Action (24% among Customer Class Counsel and 20.3% among all Plaintiffs' Counsel), the modest dollar amount of Lieff Cabraser's inadvertent double-counting ($868,417), and given the Special Master's findings as to Lieff Cabraser's modest role in the double-counting, the firm submits that if the Court requires any disgorgement, it should be obliged to pay significantly less than an "equal share" of the total double-counted lodestar.

* * *

For the reasons stated above, Lieff Cabraser objects to the Special Master's recommendation that Lieff Cabraser disgorge any portion of the double-counted lodestar. Such an outcome is inconsistent with the purposes of the lodestar cross-check in a percentage-of-the-fee recovery context, the class has suffered no harm as a result of the accidental double-counting, and the firm has already spent substantial sums to fund the investigation.

D. Lieff Cabraser Should Not Retroactively Be Required To Treat the Firm's Staff Attorneys Compensated By An Agency As A "Cost" Instead Of Including Them In Its Lodestar As Part Of The Aggregate Lodestar Cross-Check.

After his exhaustive investigation, the Special Master finds that the staff attorneys who worked on the State Street Action were highly qualified and skilled attorneys who made meaningful and valuable contributions to the success of the State Street Action by providing

[305] Executive Summary at 59.

[306] The Special Master's description in the Report of the double-counting issues makes clear that Lieff Cabraser's responsibility for the double-counting was less significant than that of its colleagues. Report at 364.

quality legal services in the nature of complex document review and analysis, and the preparation of sophisticated memoranda. *See* discussion *supra* at 57-60. Finding that the staff attorneys performed at a level comparable to a junior to mid-level associate, the Special Master concludes that their hourly rates (mostly $415 per hour for Lieff Cabraser's staff attorneys) and hours worked were reasonable and appropriate. *See* discussion *supra* at 57-60.

Despite these entirely accurate findings, the Special Master carves out for separate treatment seven of Lieff Cabraser's staff attorneys who at one time or another during the State Street Action were paid by an agency, as opposed to the firm directly. Referring in the Report to the agency attorneys as "contract attorneys," the Special Master "recommends that 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 [agency] attorneys should be reimbursed to law firms as an expense, and firms compensated for that expense dollar-for-dollar."[307]

Lieff Cabraser objects to this recommendation on the following grounds: (1) the case law does not support, and indeed flatly contradicts, the Special Master's recommendation that the time of the firm's contract/agency lawyers be treated as a cost; and (2) the "factual" distinctions the Special Master attempts to draw between the firm's staff attorneys on payroll and those paid by an agency do not support the Master's recommendation, and are at odds with a fair reading of the record. No matter what the Special Master's academic views are with respect to the treatment of contract/agency attorneys in the context of class action fee applications, those views should not displace the controlling law or the relevant facts.

[307] Executive Summary at 50, Report at 367.

1. The Case Law Does Not Support, and Indeed Contradicts, the Special Master's Recommendation The Time of the Firm's "Agency" Lawyers Be Treated as a Cost.

The Special Master states that "[w]hile legal and ethical rulings have not provided definitive guidance on this interesting issue, the better, more common-sensical view is that the costs of contract attorneys should be passed along as a reimbursable expense rather than as a marked-up profit center."[308] This statement is not accurate, and is contradicted by the very cases upon which the Special Master relies.

As Professor Rubenstein observes:

> Courts *have* provided definitive guidance: they are unanimously opposed to the Special Master's Report's approach. Numerous courts have explicitly rejected the argument that contract attorneys must be billed as a cost [footnote omitted] and many other courts – far too numerous to enumerate – have approved fee petitions that include contract attorneys in counsels' lodestar or lodestar cross-check submission. [Footnote omitted] By contrast, I am not aware of a single court in the United States that has ever held that contract attorneys must be billed to the client as a cost rather than included in the lodestar at an attorney rate. [Footnote omitted]

Rubenstein Declaration II at 12. *See also* Rubenstein, *Newberg on Class Actions* at §15:41 n.5 (listing cases rejecting the argument that contracts attorneys must be billed as a cost).

It is well-settled in the First Circuit that when calculating lodestar, the determination of reasonable rates "will vary depending on the nature of the work, the locality in which it is performed, the qualifications of the lawyers and other criteria." *Hutchinson ex rel. v. Patrick*, 636 F.3d 1, 16 (1st Cir. 2011). Most important in determining the reasonableness of hourly rates for lodestar purposes is the "market value of counsel's services." *U.S. v. One Star Class Sloop*, 546 F.3d 26, 40 (1st Cir. 2008); *see also*, *Hutchinson*, 636 F.3d at 16 ("[D]ata evidencing the prevailing market rate for counsel of comparable skill and experience provides helpful

[308] Report at 187.

guidance"); *Grendel's Den, Inc. v. Larkin*, 749 F.2d 945, 950-951, 955 (1st Cir. 1984) (reasonable fees are calculated according to the prevailing market rates in the relevant community for similar services by lawyers of comparable skill and experience). When setting forth these criteria, the First Circuit has never distinguished between different categories of lawyers, e.g., partners, associates, or staff or contract (agency) lawyers.

Although the First Circuit has not expressly addressed the issue, one district court case in the First Circuit has specifically rejected the argument that "contract" lawyers be treated as an expense instead of being included as part of lodestar. *Tyco*, 535 F.Supp.2d 249, involved a securities class action settlement in which the court used the percentage-of-the-fund method with a lodestar cross-check to evaluate the fee request. Objectors argued that contract attorneys should be treated as an expense rather than be included in the lodestar. *Id*. at 271-273. The court rejected that argument as meritless:

> The objection lacks merit. The lodestar calculation is intended not to reflect the costs incurred by the firm, but to approximate how much the firm would bill a paying client. An attorney, regardless of whether she is an associate with steady employment or a contract attorney whose job ends upon completion of a particular document review project, is still an attorney. It is therefore appropriate to bill a contract attorney's time at market rates and count these time charges toward the lodestar.

Id. at 272. [309] This decision from a different court in the First Circuit is directly contrary to the Special Master's recommendation.

A number of district courts from other circuits have expressly cited *Tyco* in rejecting the notion of treating contract attorneys as an expense. *See e.g., Carlson v. Xerox Corp.*, 596 F.Supp.2d 400, 409 (D. Conn. 2009) (citing *Tyco* in concluding the "objection unpersuasive",

[309] In fact, Lieff Cabraser has had individual bill-paying clients that have paid the hourly rates of firm staff attorneys who were paid by an agency. *See* Ex. A to Fineman Declaration at 56-59.

aff'd, 355 Fed.App. 523 (2d Cir.); *Charlebois v. Angels Baseball, LP*, 993 F.Supp.2d. 1109, 1124 (C.D.Cal. 2012) (citing *Tyco* in finding that the hours of contract attorneys "merit inclusion in the lodestar hours"); *In re Enron* Corp. Securities, Derivative and ERISA Litigation, 586 F.Supp.2d 732, 784-785 (S.D. Tex. 2008) (citing *Tyco* in concluding that "prevailing counsel can recover fees for [contract attorneys] services at market rates rather than at their cost to the firm"). *See also* Rubenstein Declaration II at 12, n. 52 (citing additional cases rejecting the argument that contract attorneys must be billed as a cost).

Moreover, and importantly, some decisions rejecting the argument that contract attorneys may only be billed as a cost expressly refer to the fact that class counsel retained the contract attorneys at issue from an agency. *See e.g.*, *Citigroup*, 965 F.Supp.2d at 394 (adjusting the hourly rates, but rejecting treating as a cost, "attorneys who are not permanent employees of the law firm, are hired largely from outside staffing agencies, are not listed on counsel's law firm website or resume, are paid by the hour, and are hired on a temporary basis to complete specific projects related to a particular action."); *In re AOL Time Warner Shareholder Derivative Litig.*, No. 02-CIV-6302 (CM), 2010 WL 363113 at *25 (S.D.N.Y. Feb. 1 , 2010) (rejecting an objector's argument that contract attorneys should be treated as an expense because the "firms seek a huge markup on the differential between their payment to the businesses referring the contract attorneys and the hourly rates sought" finding that the "contract attorneys here were not mere clerks, but exercised judgment typically reserved for lawyers, under the supervision of the firms' regular attorneys."). *See also* Rubenstein Declaration II at 12, n. 52 ("In other words, counsel's retention of contact attorneys from an outside agency does not distinguish this case from this vast body of pertinent authority.").

Despite the unequivocal holding of these cases – including the leading case from within the First Circuit – that the time of contract (agency) attorneys may be properly included in counsel's lodestar – the Special Master determines that "those decisions that find contract attorneys indistinguishable from off-track associates are not acceptable for purposes of this Report."[310] It is extraordinary that the Special Master would seek to impose a significant economic penalty on Lieff Cabraser by disregarding governing law and replacing it with his own personal views. Equally problematic is that the two cases relied upon by the Special Master for his novel position do not in fact support his approach. *See* Rubenstein Declaration II at 12-13 ("The Special Master's Report cites only two cases in support of its approach – *Dial* and *Meredith* [footnote omitted] – but when probed, neither actually supports that approach.").

In *Dial Corporation v. News Corporation*, 317 F.R.D. 426 (S.D.N.Y. 2016), lawyers for the plaintiffs *voluntarily* sought repayment for contract attorney time as a cost; the court did not require that they do so. *Id*. at 438. In *dicta,* the court in *Dial* expressed its appreciation for counsel's decision to treat the time of the contract lawyers in that case as an expense because it "save[d] the Court from having to 'determine a correct spread between the contract attorney's cost and his or her hourly rate and his or her salary.'" *Id*. at 138 (quoting *Citigroup*, 965 F.Supp.2d at 394 (in which the court rejected the argument that contract attorneys should be treated as a cost)). The court in *Dial* thus acknowledged the prevailing law that contract attorney time may be included as part of lodestar. "What this means is that absent the lawyers' voluntary decision, the *Dial* Court would have treated these attorneys as lawyers, not as an expense." Rubenstein Declaration II at 13.

[310] Report at 184.

The other case relied upon by the Special Master is *Meredith Corp. v. SESAC, LLC*, 87 F.Supp.3d 650 (S.D.N.Y. 2015). In *Meredith*, a large corporate defense firm represented a plaintiff class in an antitrust action. The decision does not expressly address the lodestar/expense issue, but rather simply identifies contract attorney time as among the expenses for which plaintiff's counsel sought reimbursement. *Id.* at 671. "It [the law firm] too voluntarily sought reimbursement for contract attorneys as cost, [footnote omitted] but in doing so, it was careful to explain to the Court that this was a deviation from the firm's usual practice. [Footnote omitted.] What this means is that absent the lawyer's voluntary decision, the large corporate firm in *Meredith* would have treated these attorneys as lawyers, not as an expenses." Rubenstein Declaration II at 13-14, and n. 58. Neither *Dial* nor *Meredith* support the Special Master's recommendation that Lieff Cabraser's agency attorneys must be treated as a cost.

Although cases that have considered the issue have rejected the argument that contract attorneys (whether on a firm's payroll or hired through an agency) must be treated as a cost, some courts have determined that the market rates for contract attorneys should be lower than comparable full-time associates. For example, in *Citigroup*, 965 F.Supp.2d at 393-399, the court rejected the argument that contract attorneys hired from outside staffing agencies should be treated as a cost, but based on the facts before it, reduced the hourly rates used by class counsel for those attorneys for purposes of a lodestar cross-check. The court found class counsel's proposed blended hourly rate of $466 for the contract/agency attorneys in that case too high when compared with a $402 per hour rate for associates, given that the contract/agency attorneys provided their document review services *after* the settlement of the case was reached, and therefore reduced the contract/agency attorneys' rate to $200 per hour. *Id.*; *see also City of Potomac General Employees' Retirement System v. Lockheed Martin Corp.*, 954 F.Supp.2d 276,

280 (S.D.N.Y. 2013) (acknowledging that "it is beyond cavil that law firms may charge more for contract attorneys' services than these services directly cost the law firm," but questioning the reasonableness of the hourly rates assigned to the contract attorneys in the case); *In re Petrobras Securities Litigation*, No. 14-CIV-9662 (JSR) (S.D.N.Y. June 25, 2018) at 32-35 (reducing the hourly rates of "staff and contract attorneys" of between $325 and $625 per hour by 20% in light of the "considerable time spent by these attorneys on low level document review").[311] *See also* Rubenstein Declaration II at 16 (noting that "some courts have treated the questions as one of degree not type, adjusting the pertinent hourly rate but rejecting the argument that the contract attorneys be passed through as a cost") and n. 69 (citing cases in which courts reduced contract attorney billing rates for lodestar cross-check purposes).

Finally, those courts that have considered the issue have rejected the argument made by the Special Master here that the lodestar of contract attorneys (in this case agency attorneys) should not be multiplied as part of a lodestar cross-check analysis. *See e.g., In re Citigroup*, 965 F.Supp.2d at 394-395 (rejecting the argument that a lodestar multiplier cannot be applied to contract attorneys' time); *AOL TimeWarner*, 2010 WL 363113 at * 26 (rejecting an objection to allowing a multiplier on contract attorney time, concluding: "It is with respect to risk, in particular, that the objection loses its allure. Counsel not only paid for the services of the contract lawyers, but also dedicated the time of their regular personnel to supervision. Because the risk is ultimately financial, counsel's recoupment risk in employing contract attorneys is no less uncertain than relating to the salaries paid to their regular employees"); *Carlson*, 596 F.Supp.2d at 409 (rejecting the argument that contract attorneys' time should not be subject to a multiplier); *In re Petrobras Securities Litigation* at 35-38 (including staff attorney and contract

[311] Ex. P to Fineman Declaration.

lawyer lodestar in awarding class counsel a multiplier).[312] *See also* Rubenstein Declaration II at 17 ("[C]ourts have explicitly rejected the argument that contract attorney time cannot be multiplied") and n. 71.

In disregarding the case law that allows multipliers on contract attorney time, the Special Master offers as a "final caution against allowing a market-rate mark up of contract attorneys," that when a multiplier is applied to market rates, "the actual realized rate on these contract attorneys can be twenty times as much as the firm actually paid the agency, or more."[313] The Special Master goes on to state, as an example, that "if a firm pays an agency $40/hour for a contract attorney but claims $400/hour for that contract attorney on its lodestar, and then obtains a 2.0 multiplier, the actual recovery rate for this contract attorney is $800/hour – or twenty times what the firm paid for the attorney."[314] With this arithmetic, the Special Master again misconceives or ignores the purpose of a lodestar cross-check.

The Court awarded Plaintiffs' Counsel 25% of the common fund. Plaintiffs' Counsel submitted their lodestar solely for cross-check, or verification, purposes. *See* discussion *supra* at 32-36. The aggregate lodestar submission showed that the 25% award was about twice Counsel's lodestar. *See Id.* This enabled the Court to decide whether that multiplier was appropriate under the circumstances. *See Id.* "The Court's conclusion that the 1.8 multiplier was justified did not mean that class counsel received $800/hour for contract attorneys. It meant that the 25% fee was justified." Rubenstein Declaration II at 17. Indeed, the class did not pay Plaintiffs' Counsel $400 per hour or $800 per hour for staff attorney time.

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[312] *Id*.

[313] Report at 188.

[314] *Id*.

2. The "Factual" Distinctions the Special Master Attempts to Draw Between the Firm's Staff Attorneys on Payroll and Those Paid By an Agency Do Not Support the Master's Recommendation.

The Special Master purports to distinguish between staff attorneys paid directly by the firm and those paid by an agency because: "the contract attorneys utilized in this case did not enjoy uninterrupted affiliation with the firm"; the firm did not offer "health insurance or provide other employment benefits" to agency attorneys; "the contract attorneys do not receive W-2s from the firm"; the firm's agency attorneys "did not bring with them the full panoply of federal and state employment law obligations that relate to employees of a business"; "Lieff did not face the same long-term financial obligations in securing contract attorneys as it did with its non-partnership-track staff attorneys"; and, "Lieff does not offer contract attorneys paid through an agency any additional monetary benefits".[315]

These distinctions between Lieff Cabraser's staff attorneys on payroll and those paid by an agency do not support the Special Master's recommendation that the time of the agency attorneys be treated as a cost for two reasons. First, there is no case law, and the Master cites none, for the proposition that these "distinguishing" facts, or facts like them, support treating a contract/agency attorney as a cost. *See* discussion *supra* at 79-85.

Second, a fair reading of the factual record concerning Lieff Cabraser's staff attorneys who worked on the State Street Action while paid by an agency highlights how insignificant, if not irrelevant, the Special Master's proposed factual distinctions actually are, and how they fail to justify his recommendation that the firm's agency lawyers be treated as a cost. These facts can be summarized as follows:

- The 18 Lieff Cabraser staff attorneys who worked on the State Street Action, including the seven who were at one time or for all times

[315] Report at 182-188.

employed by an agency, are described *supra* at 24-28, in Appendices A and B, and in Exhibit A to the Fineman Declaration.

- Throughout his Report, the Special Master recognizes the staff attorneys' stellar educational and professional backgrounds, and repeatedly praises the quality and value of their work in the State Street Action, without regard to which, if any of those staff attorneys, were paid by an agency. *See* discussion *supra* at 57-61.

- The Special Master concludes that the hourly rates for Lieff Cabraser's staff attorneys, mostly $415 per hour, were based on the nature and quality and the quality of their work, which the Master equates to that of a junior to mid-level associate, were therefore reasonable and appropriate. *See* discussion *supra* at 57-61.

- The Special Master concedes that there is no distinction between staff attorneys and agency attorneys as to the actual work performed for the benefit of the class – "[T]here is no intent to pass judgment on the merits of the work performed by those contract attorneys or their professional qualifications. Quite the contrary."[316]

- Four of Lieff Cabraser's staff attorneys – Bloomfield, Leggett, Nutting and Sturtevant – were compensated initially by an agency (which billed the firm directly for their services), but became payroll employees of the firm in January 2015, during the pendency of the State Street Action. Three of these attorneys – Bloomfield, Leggett and Nutting – put in substantial hours in both the BNY Mellon Action and the State Street Action. Leggett and Sturtevant performed their tasks on the State Street Action while working in Lieff Cabraser's San Francisco offices; Bloomfield and Nutting worked remotely in San Francisco. Leggett, Nutting and Sturtevent remain with the firm as full-time staff attorneys. *See* discussion *supra* at 24-28.

- Three of Lieff Cabraser's staff attorneys who worked on the State Street Action – Butman, McClelland, and Weiss – were compensated by an agency throughout their work on the Action. McClelland and Weiss both devoted substantial amount of time to the BNY Mellon Action. Weiss, working remotely, also recorded hundreds of hours in the State Street Action (including producing sophisticated issue memoranda) and continues to work for the firm on an agency basis. Butman and McClelland both worked in Lieff Cabraser's San Francisco office, but contributed only in modest hours to the State Street Action for the firm, 24 and 58, respectively (the bulk of McClelland's hours in the State Street Action were billed directly to Thornton and included in Thornton's lodestar). *See* discussion *supra* at 24-28.

[316] Report at 183.

- The firm incurs overhead expenses with respect to all of its staff attorneys, including its agency attorneys, including: the use of physical office space by Leggett, Sturtevant, Butman and McClelland; the use of information technology support for all seven, both in San Francisco and remotely; the use of firm administrative support (e.g., human resources on employment matters or dealing with an agency, accounting services, for payroll or interaction with an agency, and word processing for the submission of time records and the production of memoranda); assistance for all from the firm's litigation support department for training on Catalyst and as needed while performing their tasks; and, supervision of all by firm partners, senior associates and senior staff. *See* discussion *supra* at 12-13, 24-28.

- All attorneys that work for Lieff Cabraser, including those staff attorneys compensated by an agency, are covered by the firm's legal malpractice insurance policy. Of course, in the world of risk assessment, insurance companies focus on the nature of the work being performed and who it is being performed for, not on whether an attorney is receiving a W-2 or is temporary.

As these facts highlight, Lieff Cabraser's agency attorneys are "less distinct from full-time employees than the Report suggests." Rubenstein Declaration II at 14. Contrary to the Master's overbroad assumptions that the agency attorneys did not "enjoy uninterrupted affiliation with firm" and that the firm "did not face the same long-term financial obligations in securing contract attorneys as it did with its non-partnership-track staff attorneys," four of the firm's seven agency lawyers – Leggett, Nutting, Sturtevant and Weiss – began working for the firm between 2012 and 2014, and each remain with the firm today. *See* discussion *supra* at 24-28. And while it is true that the firm does not offer health insurance or certain other employment or monetary benefits to attorneys who are compensated by an agency, the firm offers a host of benefits and opportunities to agency attorneys, including, most obviously, actual employment and the resources to support that employment, and the chance to join Lieff Cabraser as payroll employees, as was the case with Bloomfield, Leggett, Nutting and Sturtevant. *See* discussion *supra* at 12-13, 24-28.

It is also true that not all federal and state employment laws that apply to the relationship between Lieff Cabraser and its employees apply to agency attorneys working under the firm's direction. Nevertheless, the firm expects its agency lawyers to abide by the firm's rules and practices, and agency attorneys are protected by state laws prohibiting harassment and discrimination in the workplace. The firm, through its human resources department, provides all personnel, whether employees of the firm, agency attorneys, or other contractors, with policies for behavioral conduct and on how to report misconduct of others.[317]

Finally, the Special Master's view that the differences he identifies between staff attorneys on the firm's payroll and those paid by an agency have any significance suggests an outdated view of the way the marketplace for legal services works today. As Rubenstein observes:

> [I]n today's current legal practice, firms have entered into far more flexible arrangements with associates and staff attorneys: for instance, many partnership-track attorneys work reduced hours (perhaps thereby removing themselves from certain benefits or legal requirements) and/or off-site or without permanent office space. To the best of my knowledge, private firms nonetheless continue to bill these attorneys at market rates, not as costs. Firms similarly bill summer law students – for whom they generally do not pay healthcare and retirement benefits – to their clients at market rates. These factual questions are complex and involve the court in inquiries irrelevant to the key concern – whether or not legal services are being provided to the client.

Rubenstein Declaration II at 15.

What matters here is not whether these seven attorneys performed their services while on the firm's payroll or being paid by an agency. What matters is the sophisticated nature and high quality of the services they rendered on behalf of the class. Nothing about their participation in the State Street Action warrants treating their time as a mere cost. *See Tyco*, 535 F.Supp.2d at

[317] Fineman Declaration at 26.

272 ("An attorney, regardless of whether she is an associate with steady employment or a contract attorney whose job ends upon completion of a particular document review project, is still an attorney [and] [i]t is therefore appropriate to bill a contract attorney's time at market rates and count these time charges toward the lodestar.").

E. Even If The Court Agrees That The Firm's Agency Lawyers Should Be Treated Differently Than The Staff Attorneys On Firm Payroll For Purposes Of The Lodestar Cross-Check, The Special Master's Recommended Disgorgement Remedy Should Be Rejected.

There is no legal or factual basis for treating any of Lieff Cabraser's agency (contract) attorneys as a cost. *See* discussion *supra* at 77-90. If, however, the Court overrules that objection, Lieff Cabraser further objects to the Special Master's proposed "remedy" that:

> The seven contract attorneys, all retained by Lieff, recorded 2,833.5 hours in this role, at rates varying between $415 and $515. The total billings for contract attorneys was approximately $1.3 million ($1,325,588). In addition, a multiplier of 1.8 was added to their hours and rates, yielding a total award of $2.4 million ($2,386,058) for the time of the contract attorneys. This amount should be disgorged in return to the Class. The Customer Class is, however, entitled to claim the contract attorneys as an expense calculated at a more reasonable rate of $50/hour. The Special Master recommends that the difference between these two figures also be awarded to the Class.[318]

Although made confusing by the last sentence, the firm understands the Special Master's recommendation to be that the firm should "disgorge" and "return" to the Class the difference between: a) the total of the firm's agency attorneys' lodestar, multiplied by 1.8; and b) $50 per hour for the agency lawyers' time. Assuming that is a correct reading of the recommendation, it would require that the firm pay $2,241,098.40 as a "remedy" for treating its agency attorneys as a cost ($1,325,5588 x 1.8 = $2,386,058, minus $144,960 (2899.2 hours x $50 per hour)).

[318] Report at 367-368. As noted above, the dollar figures and hours noted by the Special Master are misstated in the Executive Summary. Executive Summary at 50. And the hours are also misstated in the Report. We use the correct hourly total (2899.2) as the basis of the proposed cost reimbursement here.

Lieff Cabraser objects to this recommendation by the Special Master, and urges the Court to reject it, for the following reasons: (1) the Special Master's recommendation again miscomprehends or ignores the limited "cross-check" purpose for which lodestar was submitted and used in the State Street Action; (2) the inclusion of Lieff Cabraser's agency lawyers in the cross-check causes no harm to the class; and (3) penalizing Lieff Cabraser in a proposed amount of $2,241,098.40 for adhering to controlling legal principles and having committed no violation of law or ethics is blatantly unjust.

1. The Special Master's Recommendation Again Miscomprehends or Ignores the "Cross-Check" Purpose for Which Lodestar Was Submitted and Used in the State Street Action.

As in the manner in which the Special Master addressed the inadvertent double accounting, the Master has again erred in recommending a disgorgement remedy by miscomprehending or ignoring the "cross-check" purpose for which the firm's lodestar was submitted in the State Street Action. *See* discussion *supra* at 34-36, 57-61, 68-72. "The Special Master's Report errs in recommending these remedies as it confuses the nature of a lodestar cross-check, applied in this case with a lodestar-based fee, not at issue here." Rubenstein Declaration II at 18. Indeed, the Special Master's reference to the "total billings" for Lieff Cabraser's agency attorneys suggests confusion between lodestar being used for cross-check purposes and constituting an actual bill or charge to the Class. Similarly, a "multiplier of 1.8" was *not* added to the firm's agency attorneys' "hours and rates," as though Lieff Cabraser had separately charged the class a multiplier on their time. Rather, the Court compared the 25% fee award ($74,541,250) with the *aggregate* lodestar submitted by *all* Plaintiffs' Counsel ($41,323,895.75), and determined that the resulting 1.8 multiplier on that aggregate lodestar was reasonable. *See* discussion *supra* at 34-36.

Accounting for Lieff Cabraser's agency attorneys' lodestar in the context of a cross-check (the only context that matters here) means that even if the Court agrees with the Special Master that the agency attorneys' time should be treated as a cost, then the only plausible outcome is the removal of the agency lawyers' lodestar ($1,325,588) from the aggregate total lodestar, merely resulting in a higher lodestar multiplier. Rubenstein summarizes the circumstance as follows:

> Because Counsel submitted their lodestar for cross-check purposes, not for the purposes of setting an exact fee based on the lodestar, any error in their lodestar calculation does not mean that the fee awarded was necessarily an error: the lodestar is a means not an end. The critical question is the effect that the lodestar error had on the cross-check. Specifically, reducing class counsel's lodestar (by, for example, fixing the counting and/or removing the contract attorneys' time) will mean that the 25% fee award embodies a higher lodestar multiplier, which the Court will have to ensure is still reasonable.

Rubenstein Declaration II at 19.

This is the approach taken by those courts that have reduced the hourly rates of contract attorneys submitted for lodestar cross-check purposes. Courts do not order disgorgement of the delta between the submitted and the approved lodestar; rather, they simply remove the unapproved lodestar resulting in an adjustment to the multiplier used for cross-check purposes. *See*, *e.g.*, *CitiGroup*, 965 F.Supp.2d at 401 (concluding that a 3.9 multiplier, "the multiplier based on the reduced lodestars calculated by the Court," was "above the norm in securities class action settlements of similar size," settling on a percentage fee that yielded a 2.8 multiplier); *Carlson*, 596 F.Supp.2d at 409 ("[If] the charges for the contract attorneys' time were decreased, the multiplier in this case would still be a reasonable multiplier"); *In re Cathode Ray Tube (CRT) Antitrust Litigation*, No. 07-CIV-5947 (JST), 2016 WL 4126533, at *8-9 (N.D.Cal. August 3, 2016) ("[E]ven if the Court were to reduce the plaintiffs' lodestar to reflect the contract attorneys' lower billing rates, the multiplier that would result would still be well within an

acceptable range… A lodestar reduction is unnecessary when the effect on the multiplier is not material.").

Here, if both the double counted and the agency attorney hours are removed from Plaintiffs' Counsel's aggregate lodestar, the 1.8 multiplier the Court approved becomes a 2.07 multiplier.[319] As explained above, and as acknowledged by the Special Master, a 2.07 multiplier would be well within a reasonable range for cases like the State Street Action. *See* discussion *supra* at 57-61. As Rubenstein explains it, "utilizing empirical evidence of court-approved multipliers—this difference in the context of this case is not significant." [footnote omitted]). "Put differently, given the remarkable success Class Counsel achieved for the Class—an accomplishment that the Special Master recognizes [footnote omitted]—a 25% fee award embodying a 2.07 multiplier is fully reasonable, indeed modest." Rubenstein Declaration II at 19-20.

Given the purpose of the submission of lodestar for cross-check purposes, if the Court follows the Special Master's recommendation to treat Lieff Cabraser's agency attorneys as a cost, the proper way to address the matter is to remove those attorneys' lodestar from the aggregate lodestar used in the cross-check of the 25% fee. *See* discussion *supra* at 68-74. The Court can then determine whether or not the resulting aggregate multiplier is appropriate. For the reasons stated above, Lieff Cabraser submits that it would be.

[319] The corrected aggregate lodestar, after deducting the inadvertently double accounted hours, is $37,265,241.25. If the Lieff Cabraser agency attorneys' lodestar ($1,325,588) is also removed, the total lodestar becomes $35,939,653.25, and the $74,541,250 percentage award translates into a multiplier of 2.07. *See* Rubenstein Declaration II at 19.

2. The Inclusion of Lieff Cabraser's Agency Lawyers in the Cross-Check Causes No Harm to the Class.

In attempting to justify his recommended "remedy" for the inclusion of Lieff Cabraser's agency attorneys' time in the aggregate lodestar for cross-check purposes, the Special Master asserts that in "class actions, this is charged against class funds. Quite simply, this is far too steep a price for class members to pay for what amounts to rented workers."[320] This position is, quite simply, baseless. As explained above, there is no case law support for this proposition, and Lieff Cabraser's staff attorneys who were paid one time or at all times by an agency were far more than "rented workers." *See* discussion *supra* at 24-28, 57-61. Moreover, the class has not in any way been harmed by the inclusion of the firm's agency attorneys in the lodestar for cross-check purposes.

As discussed above, both the Court and the Special Master found that the $300 million settlement in the State Street Action was an "excellent result," providing significant economic benefits for the class. *See* discussion *supra* at 34-36, 57-61. Class members were informed of those benefits in the class notice, and were advised that Plaintiffs' Counsel would seek a fee up to approximately 25% of the amount recovered. *See* discussion *supra* at 32. Not a single class member – sophisticated institutional investors – opted out or objected to the settlement. *See* discussion *supra* at 34-36.

Based on Plaintiffs' Counsel's impressive achievement for the class, and applying controlling legal principles, the Court awarded the requested fees (and reimbursement of the requested expenses). *See* discussion *supra* at 34-36. Lieff Cabraser did not bill or charge the class and the class did not pay the firm for the hours worked by agency attorneys on the State Street Action. And the firm certainly did not bill or charge the class and the class did not pay

[320] Report 188.

Lieff Cabraser an additional lodestar multiplier. As Rubenstein puts it, the "reduction of an hour or time recalibrates the lodestar multiplier," but it "does not require the 'repayment' of that hour of time since counsel was never 'paid' for that hour of time; counsel were paid a percentage of the recovery." Rubenstein Declaration II at 20.

In these circumstances, the Class has suffered *no* harm as a result of the inclusion of the lodestar of Lieff Cabraser attorneys who were paid by an agency. The aggregate lodestar used for cross-check purposes verified the reasonableness of the same percentage-based fee amount the class was informed of and did not object to, and was later approved by the Court. *See* discussion *supra* at 34-36. The Special Master identifies no harm suffered by the Class that justifies such an unnecessary "remedy."

3. Penalizing Lieff Cabraser for Adhering to Controlling Legal Principles and Having Committed No Violation of Law or Ethics is Unjust.

The Special Master proposes penalizing Lieff Cabraser $2,241,098 (separate from and in addition to any double-counting penalty) because Lieff Cabraser included the lodestar of its staff attorneys who are paid by an agency as part of Plaintiffs' Counsel's aggregate lodestar submitted to the Court for cross-check purposes. *See* discussion *supra* at 62-66, 90-92. The Special Master asks the Court to impose this "remedy" on the firm even though the firm acted in compliance with all controlling and relevant case law in accounting for the agency lawyers as it did, and even though the firm violated no legal or ethical rules, and even though the Special Master finds no difference in the academic or professional backgrounds of, or the quality or nature of the work performed, by those lawyers. *See* discussion *supra* at 57-61. Rather, the Special Master recommends that this Court assess the firm $2,241,098 because the Special Master does not like the state of the law and has a different view of how agency and contract lawyers should be treated in the context of class action fee applications. *See* discussion *supra* at 82. This is a

blatantly unfair and unjust basis upon which to extract such an extraordinary sum of money from the firm. The Special Master's recommendation should be rejected.[321]

F. Lieff Cabraser Should Be Reimbursed For The Amount Of Money It Has Spent Responding To The Chargois Investigation.

The Special Master finds that Lieff Cabraser was not aware of the Chargois Arrangement, and justifiably believed Chargois to be Labaton's local counsel, and therefore bears no responsibility for the non-disclosure of the Chargois Arrangement or Chargois' involvement (or lack thereof) in the State Street Action. *See* discussion *supra* at 63-64. That conclusion is in all respects consistent with the factual record. *See* discussion *supra* at 49-56. The firm therefore respectfully requests that the Court adopt the Special Master's exclusion of Lieff Cabraser from any responsibility relating to Chargois.[322]

Based on his findings that the firm "was misled into agreeing to share in the Chargois payment" (24% of 5.5% of the total fee award ($4,099,768.75)), the Special Master states that "[o]rdinarily some recompense would be in order for this."[323] The Special Master goes on to note, however, that when asked at the April 13, 2018 Final Hearing, "what if any relief" the firm was seeking for being misled, Lieff Cabraser's general counsel, Heimann, "indicated he was not looking for any repayment."[324] The Special Master concluded therefore that the "fairest result for the Lieff firm would be for it to be relieved of its obligations to Labaton under the claw-back

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[321] Of course, Lieff Cabraser's total lodestar, including that of its agency attorneys, benefited all Plaintiffs' Counsel, including ERISA Counsel, in that the Court's lodestar cross-check in support of the 25% fee award took into account all of the lodestar submitted. Therefore, any reduction in the fee award as a result of the removal of agency attorney lodestar (or double-counted lodestar) must apply to all Plaintiffs' Counsel.

[322] Although it is unnecessary to address in this Response and Objections, in the course of the investigation Lieff Cabraser has challenged the views of the Special Master and Gillers on the applicable "disclosure" rules. *See e.g.*, Ex. 234 to Report, Rubenstein Report; Ex. 244 to Report, Dacey Report; and, Rubenstein Declaration II at 2-9.

[323] Report at 352.

[324] *Id*.

letter as to Chargois, but no more."[325] Lieff Cabraser respectfully requests that the Court adopt the Special Master's recommendation that it be relieved of any further obligations to Labaton under the claw-back agreement as to any prior or future financial obligations relating to Chargois.

Although during the Final Hearing, Heimann, speaking for the firm, declined to seek reimbursement from Labaton and/or Thornton of the approximately $1 million the firm effectively contributed to Chargois' $4.1 million fee, and although Lieff Cabraser abides by that position now, the firm *does* seek reimbursement from Labaton and/or Thornton of the costs the firm has incurred in responding to the Chargois investigation, an exercise for which Lieff Cabraser is in no way responsible. The firm seeks repayment of the amount it has contributed to the Special Master's fees and expenses that are attributable to the Chargois investigation, as well as the amount of costs and lodestar expended by the firm in addressing the Special Master's Chargois-related inquiries.

The Chargois investigation has resulted in significant expenditures of time and expense by Lieff Cabraser. The firm was drawn into the Chargois phase of the investigation through no fault of its own. *See* discussion *supra* at 49-56, 63-64.[326] Under such circumstances, reimbursement to Lieff Cabraser is appropriate under Rule 53 and the discretion of the Court. *See* Rule 53(g)(3) of the Federal Rules ("The court must allocate payment among the parties after considering the nature and amount of the controversy, the parties' means, and the extent to which any party is more responsible than other parties for the reference to a master"); *Chevron*

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[325] *Id*.

[326] The Special Master recommends directing $3.4 million of the $4.1 million Chargois "remedy" to ERISA Counsel because "this investigation has resulted in great expenditures of time and expense to the ERISA firms that have been drawn into it through no fault of their own,…." Report at 369.

Corporation v. Donziger, 11-CIV-0691 (LAK), 2017 WL 6729360, *6 (S.D.N.Y. Dec. 8, 2017) (under Rule 53(g)(3) an "interim allocation may be amended to reflect a decision on the merits").

Because the firm does not at this time know how much of the $912,000 the firm has thus far contributed to the Special Master's fees and expenses is attributable to the Chargois investigation, Lieff Cabraser proposes that if the Court agrees that the firm should be reimbursed for the amount of money it has spent responding to the Chargois investigation, it also direct the Special Master to advise the firm of the total cost (either in aggregate dollars or on a percentage of the $3.8 million) has been spent on the Chargois investigation. The firm would then submit to the Court that information, along with details supporting the firm's out-of-pocket costs and lawyer time devoted to responding to the Chargois investigation as part of a specific request for reimbursement.

IV. CONCLUSION – The Financial Impact Of The Special Master's Disgorgement Recommendations On Lieff Cabraser Are Unjust And Entirely Disproportionate To The Firm's True Conduct And The Absence Of Harm It Has Caused To The Class.

The Special Master's Final Thoughts on Remedies in the conclusion of his Report underscores how unjust and entirely disproportionate the Special Master's recommended punitive monetary remedies are as to Lieff Cabraser. The Special Master claims 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."[327] Yet, the Special Master finds that Lieff Cabraser did not engage in *any* professional misconduct, let alone any "true and unmistakable" conduct. Further the Master concludes that the firm bears the least amount of responsibility for the accidental, inadvertent double-counting of the lodestar of four staff attorneys (an unintentional overstatement of

[327] Report at 376.

$868,417). For that honest mistake, which caused no harm to the class, the Special Master recommends that Lieff Cabraser "return" to the class $1,352,667. There is nothing proportionate about the Master's punitive recommendation in this regard.

Similarly, Lieff Cabraser has committed no "wrongs" that justify the Special Master's recommendation that Lieff Cabraser "return" $2,241,098 (the actual lodestar of $1,325,588 plus a punitive multiplier) to the class because the Master disagrees with the unequivocal and abundant case law that supports Lieff Cabraser including the lodestar of seven of its staff attorneys who were paid by an agency in the lodestar submitted for cross-check purposes. There is nothing proportionate about imposing a $2,241,098 penalty on Lieff Cabraser for the firm faithfully following the law and having caused no harm to the class by doing so.

Having found Lieff Cabraser engaged in no intentional or professional misconduct and violated no rule of law or ethics, the Special Master seeks to justify the imposition of millions of dollars of monetary forfeiture by claiming that "even after the allocation of all monetary amounts, and the cost of the investigation, [Lieff Cabraser] will still receive its base lodestar plus a significant multiplier."[328] Nothing could be further from the truth. In fact, if the Court accepts the Special Master's recommendation that the firm disgorge $3,593,765 – or approximately 24% of the $15,116,965.50 in fees the firm received – in addition to (a) the $912,000 the firm has already paid to fund its share of the Special Master's investigation, and, (b) the $2.39 million the firm has spent in time and costs responding to the investigation, the firm will receive *less* than its "base lodestar" and, in fact, a *negative* multiplier (0.92%) for its exemplary service to the class in

[328] Report at 376.

the State Street Action. There is nothing "proportionate" about the Master's recommendations concerning Lieff Cabraser's conduct in this case.

Dated: June 29, 2018

Respectfully submitted,

Lieff Cabraser Heimann & Bernstein, LLP

By: */s/ Richard M. Heimann*

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APPENDIX A

Arkansas Teacher Retirement System
v.
State Street Bank and Trust Company

United States District Court
District of Massachusetts
No. 11-cv-10230 MLW

Lieff Cabraser Heimann & Bernstein, LLP's State Street Action Staff Attorneys[1]

- **Tanya Ashur:** University of Illinois, Urbana, Illinois, B.A. 1997; Chicago-Kent College of Law, Chicago, Illinois, J.D. 2000. Admitted Illinois, 2000; California, 2002.

  Prior to working for Lieff Cabraser, Ms. Ashur worked as an associate for Deloitte & Touche, Adams Nye, and Gordon & Rees, all in San Francisco, California. Ms. Ashur had extensive document review and analysis experience in complex litigation matters for Latham Watkins, Orrick, Google, and Gibson Dunn.

  Ms. Ashur began working for Lieff Cabraser in 2013. From 2013 into 2015, Ms. Ashur worked extensively on the BONY Mellon Action (2,414.80 hours). In 2015, Ms. Ashur devoted 843.50 hours at $415 per hour to document review and analysis in the State Street Class Action. She worked in the firm's San Francisco office. Ms. Ashur is currently in her sixth year with the firm. Ms. Ashur was and is compensated directly by the firm.

- **Joshua Bloomfield:** University of Pennsylvania, Pennsylvania, Philadelphia, PA, B.A. 1996; UCLA School of Law, Los Angeles, CA, J.D. 2000. Admitted California, 2001.

  Mr. Bloomfield worked as an associate for Jeffer Mangels in Los Angeles, California and Holland & Knight in San Francisco, California, before starting his own civil and criminal litigation firm. Mr. Bloomfield had extensive document review and analysis experience in complex litigation matters for King & Spalding, Paul Hastings, Morrison Foerster, Gibson Dunn, Wilmer Hale, Orrick, Sidley Austin, Jones Day, DLA Piper, and Skadden.

[1] All of the information contained in this Appendix A about Lieff Cabraser's staff attorneys is found in Ex. A to the Fineman Declaration at 18-40, and in Ex. C to the Fineman Declaration in Response to Interrogatory Numbers 24 and 25.

Mr. Bloomfield began working for Lieff Cabraser in 2013. From 2013 into 2015, Mr. Bloomfield worked extensively on the BONY Mellon Action (2,183.00 hours). In 2013 and 2015, Mr. Bloomfield devoted 2,033.20 hours at $515 per hour to document review and analysis in the State Street Class Action. He worked remotely in San Francisco, California. Mr. Bloomfield left the firm in late 2015. From 2013 through 2014, Mr. Bloomfield was compensated by an agency (which billed the firm for his services). In 2015 Mr. Bloomfield was compensated directly by the firm.

- **Elizabeth Brehm:** Boston University, Boston, Mass, B.S. 2001; Hofstra University School of Law, Hempstead, NY, J.D., magna cum laude, 2008. Admitted New York, 2008.

  Prior to working for Lieff Cabraser, Ms. Brehm worked as an associate for Winston & Strawn and Kirby McInerney, both in New York, New York. During her time at Kirby – a leading plaintiff-side litigation firm – Ms. Brehm focused on antitrust, securities and financial fraud cases, and gained relevant experience with numerous document review projects in financial fraud cases.

  Ms. Brehm began working for Lieff Cabraser in 2013. From 2013 into early 2015, Ms. Brehm devoted 1,682.90 hours at $415 per hour to document review and analysis in the State Street Class Action. She worked remotely in New York, New York. Ms. Brehm left the firm in late 2015. Ms. Brehm was compensated directly by the firm.

- **Jade Butman:** Dartmouth College, Hanover, NH, B.A. 1992; University of Pittsburgh School of Law, Pittsburgh, PA, J.D. 1997. Admitted New Hampshire, 1997; New York, 1998; California, 2005.

  Prior to working for Lieff Cabraser, Ms. Butman worked as an associate for Constantine Cannon (antitrust) and Kaplan Landau (commercial litigation) in New York, New York, and for Keller Grover (consumer class cases) in San Francisco, California. Ms. Butman had additional extensive and relevant document review in complex litigation matters for Viacom in New York, and Robbins Geller and Berman DeValerio (plaintiff-side class action firms) in San Francisco, California.

  Ms. Butman worked for Lieff Cabraser in 2014 and 2015. In 2015, Ms. Butman devoted only 24.00 hours at $515 per hour to document review and analysis in the State Street Class Action. She worked in the firm's San Francisco office. Ms. Butman left the firm at the end of 2015. Ms. Butman was compensated by an agency (which billed the firm for her services).

- **James Gilyard:** San Francisco State University, San Francisco, California, B.A. 1999; University of San Francisco School of Law, San Francisco, California, J.D. 2002. Admitted California, 2002.

Prior to working for Lieff Cabraser, Mr. Gilyard worked as an associate for Robbins Geller (a plaintiff-side class action firm), in San Francisco, California, where, among other things, he gained extensive experience in document review and analysis. Mr. Gilyard had additional extensive document review and analysis experience in complex litigation matters for Bingham McCutchen, Morrison & Foerster, and Wilson Sonsini, among others.

Mr. Gilyard began working for Lieff Cabraser in 2013. From 2013 into 2015, Mr. Gilyard worked extensively on the BONY Mellon Action (2,614.50 hours). In 2015, Mr. Gilyard devoted 882 hours at $415 per hour to document review and analysis in the State Street Class Action. He worked in the firm's San Francisco office. Mr. Gilyard left Lieff Cabraser in late 2016. Mr. Gilyard was compensated directly by the firm.

- **Kelly Gralewski:** California State University, Chico, San Diego, California, B.S. and B.A. 1992; California Western School of Law, San Diego, California, J.D. 1997. Admitted California, 1998.

  Prior to working for Lieff Cabraser, Ms. Gralewski worked as an associate for Peterson & Price, a real estate, business law and dispute resolution firm in San Diego, California. While there, Ms. Gralewski gained experience in the review and analysis of corporate documents.

  Ms. Gralewski began working for Lieff Cabraser in 2009. Since then, and continuing to today, Ms. Gralewski has worked on a number of financial fraud cases at Lieff Cabraser. In 2012 and 2015, Ms. Gralewski worked on the BONY Mellon Action (301.50 hours). In 2013 and 2015, Ms. Gralewski devoted 1,478.90 hours at $415 per hour to document review and analysis in the State Street Class Action. She worked remotely in San Diego, California. Ms. Gralewski was and is compensated directly by the firm.

- **Christopher Jordan:** University of North Carolina, Chapel Hill, North Carolina, B.A. 2000; Stanford Law School, Stanford, California, J.D. 2004. Admitted California, 2011; Texas, 2012.

  Prior to working for Lieff Cabraser, Mr. Jordan worked extensively in the management, supervision of, and execution of large scale document review and analysis projects in complex litigation matters for Debevoise & Plimpton in New York and Troutman Sanders in Atlanta, Georgia.

  Mr. Jordan began working for Lieff Cabraser in 2012. In 2014 and 2015, Mr. Jordan worked extensively on the BONY Mellon Action (1,572.90). In 2015, Mr. Jordan devoted 539.90 hours at $415 per hour to document review and analysis in the State Street Class Action for Lieff Cabraser. He worked additional hours in the State Street Class Action that were attributed to Thornton. He worked remotely in Houston, Texas and Atlanta, Georgia. Mr. Jordan remains engaged

by Lieff Cabraser on document review and analysis projects. Mr. Jordan was and is compensated directly by the firm.

- **Jason Kim:** University of California at Davis, Davis, California, B.A. 2002; Thomas Jefferson School of Law, San Diego, California, J.D. 2009. Admitted California, 2009.

  Prior to working for Lieff Cabraser, Mr. Kim worked as an associate for the full service litigation firm, Renchner Law Group in San Francisco, California, before starting his own civil litigation law firm in Santa Clara, California. Mr. Kim had extensive document review and analysis experience in complex litigation matters for McDermott Will & Emory, Quinn Emmanuel, and Crowell Moring.

  Mr. Kim began working for Lieff Cabraser in 2011. From 2013 into 2015, Mr. Kim worked extensively on the BONY Mellon Action (2,659.00). In 2015, Mr. Kim devoted 904 hours at $415 per hour to document review and analysis in the State Street Class Action. He worked in the firm's San Francisco office. Mr. Kim is currently engaged by Lieff Cabraser on document review and analysis projects. Mr. Kim was and is paid directly by the firm.

- **James Leggett:** University of California, Davis, Davis, California, B.A. 2004; Santa Clara University School of Law, Santa Clara, California, J.D., cum laude, Order of the Coif, 2012. Admitted California, 2012.

  Prior to law school, Mr. Leggett worked as a private banker at UMB Bank in Denver, Colorado for almost four years. Immediately after law school, Mr. Leggett performed document review and analysis in financial fraud and employment cases at the plaintiff-side litigation firm Schneider Wallace in San Francisco, California.

  Mr. Leggett began working for Lieff Cabraser in 2013. From 2013 into 2015, Mr. Leggett worked extensively on the BONY Mellon Action (2,476.20 hours). In 2015, Mr. Leggett devoted 893 hours at $415 per hour to document review and analysis in the State Street Class Action. He worked in the firm's San Francisco office. Mr. Leggett is currently engaged by Lieff Cabraser on document review and analysis projects. In 2013 and into 2015 Mr. Leggett was compensated by an agency (which billed the firm for his services). Since the end of January 2015, Mr. Leggett has been compensated directly by the firm.

- **Coleen Liebmann:** University of the Pacific, B.A. 1992; University of San Francisco School of Law, San Francisco, California, J.D. 2003. Admitted California, 2006.

  Prior to working for Lieff Cabraser, Ms. Liebmann had more than 11 years of experience in document and privilege review and analysis in complex litigation matters for a number of the country's most prestigious law firms, including Williams & Connolly, Latham & Watkins, DLA Piper, Quinn Emmanuel,

Morrison Foerster, Perkins Coie, Wilmer Hale, O'Melveny & Myers, Jones Day, and Farella Braun & Martel.

Ms. Liebmann began working for Lieff Cabraser in 2014. In 2015, Ms. Liebmann devoted only 24 hours at $415 per hour to document review and analysis in the State Street Class Action. She worked in the firm's San Francisco office. Ms. Liebmann remains engaged by Lieff Cabraser on document review and analysis projects. Ms. Liebmann was and is compensated directly by the firm.

- **Andrew McClelland:** University of California, Davis, Davis, California, B.A. 2002; University of the Pacific, McGeorge School of Law, Sacramento, CA, J.D., Order of the Coif, 2008. Admitted California, 2008.

  Prior to working for Lieff Cabraser, Mr. McClelland worked as an associate for the construction defect litigation firm, Boornazian, Jensen & Garthe in Oakland, California, and as an associate for a similar firm, Lorber Greenfield & Polito, in San Francisco, California. At both firms, Mr. McClelland had extensive document review and analysis experience. In addition, Mr. McClelland conducted document review and analysis in complex litigation matters for Bingham and Smith Lillis Pitha, in San Francisco, California.

  Mr. McClelland began working for Lieff Cabraser in 2013. From 2013 into 2015, Mr. McClelland worked extensively on the BONY Mellon Action (1,799.00 hours). In 2015, Mr. McClelland devoted 58 hours at $415 per hour to document review and analysis in the State Street Class Action attributable to Lieff Cabraser. He worked additional hours in the State Street Class Action that were attributed to Thornton. He worked in the firm's San Francisco office. Mr. McClelland left Lieff Cabraser in 2015. Mr. McClelland was compensated by an agency (which billed the firm or Thornton for his services).

- **Scott Miloro:** Cornell University, Ithaca, New York, B.S. 1994; State University of New York at Buffalo, Buffalo, New York, M.S. 1996; Cardozo School of Law, New York, New York, J.D. 2006. Admitted New York, 2006; United States Patent and Trademark Office, 2006.

  Prior to working for Lieff Cabraser Mr. Miloro spent more than three years as an associate at the intellectual property firm of Ohlandt, Greely, Ruggiero & Perle in Stamford, Connecticut. In that capacity, Mr. Miloro gained extensive experience in reviewing and analyzing complex technical documents.

  Mr. Miloro began working for Lieff Cabraser in 2011. From 2012 into 2015, Mr. Miloro worked extensively on the BONY Mellon Action (3,146.80). In 2015, Mr. Miloro devoted 658.80 hours at $415 per hour to document review and analysis in the State Street Class Action. He worked in the firm's New York office. Mr. Miloro remains engaged by Lieff Cabraser on document review and analysis projects. Mr. Miloro was and is paid directly by the firm.

- **Leah Nutting:** University of California Berkeley, Berkeley, California, B.A. 1999; Harvard Law School, Cambridge, Massachusetts, J.D. 2002. Admitted California, 2002.

  Prior to working for Lieff Cabraser, Ms. Nutting was an associate in the securities litigation group at Clifford Chance, and then in the general litigation group at Orrick, both in San Francisco, California. During her four years at those two firms, Ms. Nutting had extensive experience in investigating complex financial fraud matters, including experience in document review and analysis. Ms. Nutting also engaged in extensive document review in complex litigation matters for Kilpatrick Townsend, Bloomberg, and Morrison Foerster.

  Ms. Nutting began working for Lieff Cabraser in 2012. From 2012 into 2015, Ms. Nutting worked extensively on the BONY Mellon Action (3,128.40 hours). In 2013 and 2015, Ms. Nutting devoted 1,940.10 hours at $415 per hour to document review and analysis in the State Street Class Action. She worked remotely in San Francisco, California. Ms. Nutting is currently engaged by Lieff Cabraser on document review and analysis projects. Through early 2016, Mr. Nutting was compensated by an agency (which billed the firm for her services). Since early 2015, Ms. Nutting has been paid directly by the firm.

- **Marissa Oh:** Rice University, Houston, Texas, B.A. 1999; Stanford Law School, Stanford, California, J.D. 2004. Admitted California, 2004.

  Prior to working for Lieff Cabraser, Ms. Oh (formerly Marissa Lackey) was an associate at Orrick in San Francisco, California, where she gained extensive experience in financial fraud litigation and where her responsibilities included coordination and supervision of document reviews. Ms. Oh also has extensive document review and analysis experience in complex litigation matters at various top tier law firms, including Keker & Van Nest and Morrison Foerster in San Francisco, California.

  Ms. Oh began working for Lieff Cabraser in 2013. From 2013 into 2015, Ms. Oh worked extensively on the BONY Mellon Action (2,575.70 hours). In 2015, Ms. Oh devoted 800.30 hours at $515 per hour to document review and analysis in the State Street Class Action. She worked in the firm's San Francisco office. Ms. Oh remains engaged by Lieff Cabraser on document review and analysis projects. Ms. Oh was and is compensated directly by the firm.

- **Peter Roos:** University of Limburg, Maastricht, The Netherlands, J.D. 1989; University of San Francisco School of Law, L.L.M. 2001. Admitted The Netherlands, 1989; California, 2002.

  Prior to working for Lieff Cabraser, for more than 18 years, Mr. Roos was an associate and then a partner at Baker & McKenzie in Amsterdam, The Netherlands, and in Palo Alto, California. During those years, Mr. Roos gained extensive experience in financial and corporate transactions and documentation.

In more recent years, Mr. Roos engaged in extensive document review and analysis in complex litigation matters for such major American law firms as Jeffer Mangels, Gibson Dunn, Morrison Foerster, Paul Hastings, and Hopkins & Carley, among others.

Mr. Roos began working for Lieff Cabraser in 2013. In 2015, Mr. Roos devoted 780 hours at $415 per hour to document review and analysis in the State Street Class Action. He worked in the firm's San Francisco office. Mr. Roos remains engaged by Lieff Cabraser on document review and analysis projects. Mr. Roos was and is compensated directly by the firm.

- **Ryan Sturtevant:** University of California, Santa Barbara, Santa Barbara, California, B.A. 2001; University of California, Santa Barbara, Santa Barbara, California, M.A. 2003; University of California, Hastings College of the Law, San Francisco, California, J.D. 2005. Admitted California, 2006.

  Prior to working for Lieff Cabraser, Mr. Sturtevant gained extensive experience in document review and analysis in complex litigation matters for a number of major American law firms, including Bingham, Cooley, Morrison Foerster, Wilson Sonsini, O'Melveny & Myers, and Jones Day. In particular, Mr. Sturtevant gained experience in securities and financial fraud class actions.

  Mr. Sturtevant began working for Lieff Cabraser in 2013. In 2015, Mr. Sturtevant devoted 796 hours at $415 per hour to document review and analysis in the State Street Class Action. He worked in the firm's San Francisco office. Mr. Sturtevant is currently engaged by Lieff Cabraser on document review and analysis projects. Until early 2015, Mr. Sturtevant was compensated by an agency (which billed the firm for his services). From the end of January to this day Mr. Sturtevant has been paid directly by the firm.

- **Virginia Weiss:** University of Northern Iowa, B.A. 2004; University of Kansas School of Law, J.D. 2007. Admitted Minnesota, 2007; California, 2010.

  Prior to working for Lieff Cabraser, Ms. Weiss dedicated more than 15 years to document review and analysis in complex litigation matters for numerous law firms and organizations, including Epstein Becker and Crowell and Moring, in San Francisco, California.

  Ms. Weiss began working for Lieff Cabraser in 2014. In 2014 and into 2015, Ms. Weiss worked extensively on the BONY Mellon Action ((1,445.80 hours). In 2015, Ms. Weiss devoted 473.50 hours at $415 per hour to document review and analysis in the State Street Class Action for Lieff Cabraser. She spent additional time on the case in 2015 which was paid for by the Thornton firm. She worked remotely in Rochester, Minnesota and Sacramento, California. Ms. Weiss continues to work on document review and analysis projects for Lieff Cabraser. Ms. Weiss was and is compensated by an agency (which bills the firm for her services).

- **Jonathan Zaul:** University of California, Berkeley, Berkeley, California, B.A. 2004; University of San Francisco School of Law, San Francisco, California, J.D. 2009. Admitted California, 2009.

  Following law school and a judicial clerkship, Mr. Zaul opened his own transactional and civil litigation law firm where he served as the principal.

  Mr. Zaul began working for Lieff Cabraser in 2012. From 2013 into 2015, Mr. Zaul worked extensively on the BONY Mellon Action (2,197.90. In 2015, Mr. Zaul devoted 495.20 hours at $415 per hour to document review and analysis in the State Street Class Action for Lieff Cabraser. Mr. Zaul worked additional hours on the State Street Class Action that were attributed to Thornton. He worked remotely in San Francisco, California. Mr. Zaul is currently engaged by Lieff Cabraser on document review and analysis projects. Mr. Zaul was and is compensated directly by the firm.

APPENDIX B

Arkansas Teacher Retirement System
v.
State Street Bank and Trust Company

United States District Court
District of Massachusetts
No. 11-cv-10230 MLW

Lieff Cabraser Heimann & Bernstein, LLP's State Street Action Staff Attorneys[1]

Name	Undergrad	Law School	Grad. Year	Years in Practice as of 2016 (following first bar admission)	Tenure with Lieff Cabraser	Billing Rate in 2016	Hours Worked on BONY Mellon	Hours Worked on State Street	LCHB Payroll or Agency	Worked in LCHB Office or Remotely in 2013-15
Tanya Ashur	University of Illinois	Chicago-Kent College of Law	2000	17+	2013 – present	$415	2,414.50	843.50	Payroll	Office (SF)
Joshua Bloomfield	University Pennsylvania	UCLA School of Law	2000	16+	2013 - 2015	$515	2,183.00	2,033.20	Agency; Payroll (Jan. 2015)	Remote (SF)
Elizabeth Brehm	Boston University	Hofstra University School of Law	2008	9+	2013 – 2015	$415	None	1,682.90	Payroll	Remote (NY)

[1] All of the information contained in this Appendix A about Lieff Cabraser's staff attorneys is found in Ex. A to the Fineman Declaration at 18-40, and in Ex. C to the Fineman Declaration in Response to Interrogatory Numbers 24 and 25.

Name	Undergrad	Law School	Grad. Year	Years in Practice as of 2016 (following first bar admission)	Tenure with Lieff Cabraser	Billing Rate in 2016	Hours Worked on BONY Mellon	Hours Worked on State Street	LCHB Payroll or Agency	Worked in LCHB Office or Remotely in 2013-15
Jade Butman	Dartmouth College	University of Pittsburgh School of Law	1997	20+	2014 – 2015	$515	None	24.00	Agency	Office (SF)
James Gilyrad	San Francisco State University	University of San Francisco School of Law	2002	15+	2013 – 2016	$415	2,614.50	882.00	Payroll	Office (SF)
Kelly Gralewski	California State University, Chico	California Western School of Law	1997	19+	2009 – present	$415	301.50	1,475.90	Payroll	Remote (San Diego, CA)
Christopher Jordan	University of North Carolina	Stanford Law School	2004	6+	2012 – present	$415	1,572.90	539.90	Payroll	Remote (Houston, TX and Atlanta, GA)
Jason Kim	University of California, Davis	Thomas Jefferson School of Law	2009	8+	2016 – present	$415	2,659.00	904.00	Payroll	Office (SF)
James Leggett	University of California, Davis	Santa Clara University School of Law	2012	5+	2013 – present	$415	2,476.20	893.00	Agency; Payroll (Jan. 2015)	Office (SF)

Name	Undergrad	Law School	Grad. Year	Years in Practice as of 2016 (following first bar admission)	Tenure with Lieff Cabraser	Billing Rate in 2016	Hours Worked on BONY Mellon	Hours Worked on State Street	LCHB Payroll or Agency	Worked in LCHB Office or Remotely in 2013-15
Coleen Liebmann	University of the Pacific	University of San Francisco School of Law	2003	11+	2014 – present	$415	None	24.00	Payroll	Office (SF)
Andrew McClelland	University of California, Davis	McGeorge School of Law	2008	9+	2013 – 2015	$415	1,799.00	58.00	Agency	Office (SF)
Scott Miloro	Cornell University	Cardozo School of Law	2006	11+	2011 – present	$415	3,146.80	658.80	Payroll	Office (NY)
Leah Nutting	University of California, Berkeley	Harvard Law School	2002	15+	2012 – present	$415	3,128.40	1,940.10	Agency; Payroll (Jan. 2015)	Remote (SF)
Marissa Oh	Rice University	Stanford Law School	2004	17+	2013 – present	$515	2,576.70	800.30	Payroll	Office (SF)
Peter Roos		University of Limburg J.D. University of San Francisco School of Law L.L.M.	1989 2002	27+ (15+ in the U.S.)	2013 – present	$415	None	780.00	Payroll	Office (SF)
Ryan Sturtevant	University of California, Santa Barbara	University of California, Hastings College of the Law	2005	11+	2012 – present	$415	None	796.00	Agency; Payroll (Jan. 2015)	Office (SF)

Name	Undergrad	Law School	Grad. Year	Years in Practice as of 2016 (following first bar admission)	Tenure with Lieff Cabraser	Billing Rate in 2016	Hours Worked on BONY Mellon	Hours Worked on State Street	LCHB Payroll or Agency	Worked in LCHB Office or Remotely in 2013-15
Virginia Weiss	University of Northern Iowa	University of Kansas School of Law	2007	10+	2014 – present	$415	1,445.80	473.50	Agency	Remote (Rochester, MN and Sacramento, CA)
Jonathan Zaul	University of California, Berkeley	University of San Francisco School of Law	2009	8+	2012 – present	$415	2,197.90	495.20	Payroll	Remote (SF)

APPENDIX C

Arkansas Teacher Retirement System
v.
State Street Bank and Trust Company

United States District Court
District of Massachusetts
No. 11-cv-10230 MLW

Special Master Investigation – Deponents List

Firm Name/Other	Deponent's Name	Date(s) Deposed	# of Pages of Testimony	Total Deposition Time	Special Master Personnel in Attendance
Labaton	Alpers, David	6/5/17	62	70 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
Labaton	Bolano, Maritza	6/5/17	32	45 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
Labaton	Greene, Tryphena	6/5/17	30	32 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
Thornton	Hoffman, E.	6/5/17	120	148 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
Labaton	Kussin, Todd	6/5/17	77	78 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
Labaton	Orji, Comfort	6/5/17	22	27 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
LCHB	Ashur, T.	6/6/17	48	65 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
LCHB	Fineman, S.	6/6/17	105	113 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
LCHB	Gralewski, K.	6/6/17	22	27 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman

Firm Name/Other	Deponent's Name	Date(s) Deposed	# of Pages of Testimony	Total Deposition Time	Special Master Personnel in Attendance
LCHB	Jordan, C.	6/6/17	39	52 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
LCHB	Oh, M.	6/6/17	38	44 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
LCHB	Zaul, J.	6/6/17	37	51 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
Labaton	Belfi, E.	6/14/17	70	77 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
Labaton	Hopkins, G.	6/14/17	119	126 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
Labaton	Politano, R.	6/14/17	67	63 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
Labaton	Sucharow, L.	6/14/17	73	78 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
Labaton	Zeiss, N.	6/14/17	87	103 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
LCHB	Chiplock, D.	6/16/17	226	274 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
LCHB	Dugar, K.	6/16/17	115	116 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
Labaton	Rogers, M.	6/16/17	103	95 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
Thornton	Bradley, G.	6/19/17	92	105 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
Thornton	Bradley, M.	6/19/17	68	81 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
Thornton	Lesser, M.	6/19/17	84	106 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
Thornton	Thornton, M.	6/19/17	101	173 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman

Firm Name/Other	Deponent's Name	Date(s) Deposed	# of Pages of Testimony	Total Deposition Time	Special Master Personnel in Attendance
ERISA	Kober, Alan	7/6/17	35	55 minutes	In Person: Hylenski, McEvoy, Sinnott, Toothman Note- At the outset, Sinnott said that Rosen would be joining the deposition, but Rosen's appearance is not noted in the record.
ERISA	Kravitz, Carl	7/6/17	128	212 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
ERISA	Sarko, Lynn	7/6/17	120	166 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
ERISA	Strangeland, James	7/6/17	25	41 minutes	In Person: Hylenski, McEvoy, Sinnott, Toothman
ERISA	Wallace, Janet	7/6/17	19	27 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
ERISA	Axelrod, Jonathon	7/7/17	56	80 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
ERISA	Brickman, Michael	7/7/17	63	97 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
ERISA	Cohn, Michael	7/7/17	29	42 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
ERISA	Henriquez, Arnold	7/7/17	24	24 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
ERISA	McTigue, Brian	7/7/17	104	153 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
ERISA	Taylor, William	7/7/17	20	22 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
Labaton	Goldberg, Howard	7/17/17	63	64 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
Labaton	Goldsmith, David	7/17/17	177	300 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman

Firm Name/Other	Deponent's Name	Date(s) Deposed	# of Pages of Testimony	Total Deposition Time	Special Master Personnel in Attendance
LCHB	Heimann, R.	7/17/17	112	135 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
Labaton	Johnson, James	7/17/17	57	62 minutes	In Person: Hylenski, McEvoy, Rosen, Sinnott, Toothman
Labaton	Sucharow, L.	9/1/17	117	148 minutes	In Person: Kelly, McEvoy, Rosen, Sinnott Phone: Hylenski, Toothman
Thornton	Thornton, M.	9/1/17	160	227 minutes	In Person: Kelly, McEvoy, Rosen, Sinnott Phone: Toothman
Labaton	Belfi, E.	9/5/17	124	201 minutes	In Person: Kelly, Rosen, Sinnott Phone: Hylenski, Toothman
Labaton	Hopkins, G.	9/5/17	107	126 minutes	In Person: Kelly, Rosen, Sinnott Phone: Hylenski, Toothman
LCHB	Chiplock, D.	9/8/17	146	183 minutes	In Person: Kelly, Rosen, Sinnott Phone: Hylenski, Toothman
ERISA	McTigue, Brian	9/8/17	42	57 minutes	In Person: Rosen, Sinnott Phone: Hylenski, Toothman
ERISA	Sarko, Lynn	9/8/17	130	198 minutes	In Person: Kelly, Rosen, Sinnott Phone: Hylenski, Toothman
ERISA	Kravitz, Carl	9/11/17	115	159 minutes	In Person: Kelly, Rosen, Sinnott Phone: Hylenski, Toothman
LCHB	Lieff, R.	9/11/17	107	164 minutes	In Person: Kelly, Rosen, Sinnott Phone: Hylenski, Toothman

Firm Name/Other	Deponent's Name	Date(s) Deposed	# of Pages of Testimony	Total Deposition Time	Special Master Personnel in Attendance
Labaton	Politano, R.	9/11/17	24	29 minutes	In Person: Kelly, Rosen, Sinnott Phone: Hylenski, Toothman
Thornton	Bradley, G.	9/14/17	164	196 minutes	In Person: Kelly, Rosen, Sinnott, Phone: Hylenski, McEvoy, Toothman
Labaton	Zeiss, N.	9/14/17	159	243 minutes	In Person: Kelly, Rosen, Sinnott, Phone: Hylenski, McEvoy, Toothman
Labaton	Goldsmith, David	9/20/17	259	419 minutes	In Person: Kelly, Rosen, Sinnott, Phone: Hylenski, McEvoy, Toothman
Labaton	Chargois, D.	10/2/17	322	465 minutes	In Person: Kelly, McEvoy, Mulcahy, Rosen, Sinnott Phone: Hylenski
Labaton	Keller, C.	10/13/17	263	343 minutes	In Person: Kelly, Mulcahy, Rosen, Sinnott Phone: McEvoy
Labaton	Keller, C.	10/25/17	292	428 minutes	In Person: Hylenski, Kelly, Mulcahy, Rosen, Sinnott
Experts	Gillers	3/20/18	363	567 minutes	In Person: Gillers, Lee, McEvoy, Rosen, Sinnott Phone: Hylenski
Experts	Gillers	3/21/18	70	100 minutes	In Person: Gillers, McEvoy, Rosen, Sinnott Phone: Hylenski

Firm Name/Other	Deponent's Name	Date(s) Deposed	# of Pages of Testimony	Total Deposition Time	Special Master Personnel in Attendance
Experts	Sarrouf	3/21/18	156	234 minutes	In Person: Gillers, McEvoy, Rosen, Sinnott Phone: Hylenski
Experts	Sarrouf	3/24/18	179	200 minutes	In Person: McEvoy, Rosen, Sinnott Phone: Gillers
Experts	Joy, P.	4/3/18	184	246 minutes	In Person: Gillers, Hylenski, McEvoy, Rosen, Sinnott
Experts	Wendel	4/3/18	207	252 minutes	In Person: Gillers, Hylenski, McEvoy, Rosen, Sinnott
Experts	Green	4/4/18	173	234 minutes	In Person: Gillers, McEvoy, Rosen, Sinnott Phone: Hylenski
Experts	Lieberman	4/4/18	128	155 minutes	In Person: Gillers, McEvoy, Rosen, Sinnott Phone: Hylenski
Experts	Dacey	4/9/18	86	126 minutes	In Person: Gillers, McEvoy, Rosen, Sinnott Phone: Hylenski
Experts	Vairo, Georgene	4/10/18	110	158 minutes	In Person: McEvoy, Rosen, Sinnott Phone: Gillers
Experts	Rubenstein	4/9/18	217	340 minutes	In Person: Gillers, McEvoy, Rosen, Sinnott Phone: Hylenski
		Total Pages/Minutes	**7,273** pages	**9,827** minutes	

Firm Name/Other	Deponent's Name	Date(s) Deposed	# of Pages of Testimony	Total Deposition Time	Special Master Personnel in Attendance
				163.78 hours	

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, 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 EMPLOYEES SAVINGS AND PROFIT SHARING PLAN, on behalf of itself and JAMES PEHOUSHEK-STRANGELAND, and all others similarly situated, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 11-cv-11698 MLW

DECLARATION OF WILLIAM B. RUBENSTEIN IN SUPPORT OF LIEFF CABRASER HEIMANN & BERNSTEIN, LLP'S RESPONSE AND OBJECTIONS TO THE SPECIAL MASTER'S REPORT AND RECOMMENDATIONS

1. I am the Sidley Austin Professor of Law at Harvard Law School and a leading national expert on class action law generally and class action fees in particular. In the spring of 2017, the law firm Lieff Cabraser Heimann & Bernstein, LLP ("LCHB") retained me to provide my expert opinion on several aspects of these proceedings. Since that time:

- I submitted an initial declaration, dated July 31, 2017, that addressed, among other issues, the proper manner for billing non-partnership track attorneys and the relevance, for lodestar cross-check purposes, of the inadvertent double counting of staff or contract attorney lodestar.[1]

- I submitted a report, dated March 26, 2018, as a rebuttal witness, that responded to the class action aspects of Professor Stephen Gillers's February 23, 2018 expert report.[2]

- I sat for a deposition by the Special Master and his Counsel for about six hours on April 9, 2018.

The Special Master's Report[3] failed to include or address my July 31, 2017 Fee Declaration, but referenced and discussed my March 26, 2018 Rebuttal Report and April 9, 2018 deposition testimony at some length. I submit this Declaration (1) to respond to the characterizations of my testimony in the Special Master's Report, particularly as to counsel's responsibilities under Rule 23(e)(3) (Part I, *infra*); (2) to address what I believe are errors in the treatment of contract attorneys in the Special Master's Report (Part II, *infra*); and (3) to address what I regard as the

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[1] Expert Declaration of William B. Rubenstein (July 31, 2017) (hereafter "Rubenstein Fee Declaration"). Because, as noted below, the Special Master did not include this document in the record of the case, I have attached it hereto as Exhibit A. The Court will note that it contains a fuller exposition of my credentials (¶¶2–7), disclosure of my prior relationships to the firms in the case (¶8), and a full copy of my c.v. (Exhibit A).

[2] Expert Report of William B. Rubenstein (Mar. 26, 2018) (hereafter "Rubenstein Rebuttal Report").

[3] Special Master's Report and Recommendations (May 14, 2018) (hereafter "Special Master's Report").

Special Master's Report's failure to properly acknowledge the distinction between a lodestar cross-check submission and a lodestar-based fee request, an error that resulted in the illogical recommendation that LCHB "repay" more than $2 million in "lodestar" to the class (Part III, *infra*).[4]

I.
The Special Master's Report and Executive Summary Misstate and Misapply the Law Regarding Agreements Made in Connection with Class Action Settlement Proposals and Erroneously Characterize My Testimony in Several Other Respects

2. On February 23, 2018, Professor Stephen Gillers filed a report herein discussing, *inter alia*, the application of Rule 23's fee provisions – Rule 23(h) and cross-referenced Rule 54 – to the facts of this case.[5]

3. On March 26, 2018, in partial response to the Gillers Report, LCHB submitted a report entitled, "Expert Report of William B. Rubenstein." The first paragraph explained that this was my expert opinion "in response to the class action aspects of Professor Stephen Gillers's Ethical Report for Special Master Gerald E. Rosen."[6] The content emphasized that Rule 23(h), cross-referencing Rule 54(b), requires the disclosure of fee agreements only upon court order.

4. On April 9, 2018, the Special Master and his Counsel, with Professor Gillers

[4] These responses to the Special Master's Report apply as well to the corresponding sections of the Report's Executive Summary.

[5] Professor Stephen Gillers, Ethical Report for Special Master Gerald E. Rosen 66–71 (Feb. 23, 2018) (hereafter "Gillers Report").

[6] Rubenstein Rebuttal Report at ¶ 1.

seated next to them, deposed me – as a rebuttal witness[7] – for nearly six hours about the opinions expressed in the Rubenstein Rebuttal Report.

5. On May 8, 2018, Professor Gillers filed a supplemental report in which he explicitly renounced his reliance on Rule 23(h)/Rule 54[8] and reported that he accepted my interpretation of these provisions.[9]

6. On May 19, 2018, the Special Master filed his report with the Court. In that Report, he too accepts my interpretation of Rule 23(h)/Rule 54, writing:

> Although Professor Rubenstein is in agreement with the Special Master and advocates that, in the interest of transparency, fee allocation agreements should be made known to the class, *see* Rubenstein, *5 Newberg on Class Actions*, at § 15:12, ***as nothing in Rule 23 requires disclosure of fee agreements absent a court order***, the Special Master cannot conclude with certainty that as a matter of law the nondisclosure of the Chargois Agreement in the Notice provided to the class members violated any Rule of Civil Procedure.[10]

7. Despite the broad language of the underscored passage above, elsewhere in his Report the Special Master newly relies on the settlement – not fee – provision of Rule 23, contained in Rule 23(e), to argue that Lead Counsel should have disclosed its financial commitment to Damon Chargois to the Court in conjunction with submitting the settlement for

[7] Rubenstein Dep. at 35:10–12 ("THE WITNESS: All right. So I'm here as a rebuttal witness, and I haven't prepared -- THE SPECIAL MASTER: I understand."); *see also id.* at 150:13–14 ("I'm here as a rebuttal witness . . . .").

[8] Supplemental Ethical Report for Special Master Gerald E. Rosen at 78 ("I do not rely on Rules 23 and 54 for my opinion.") (hereafter "Supplemental Gillers Report").

[9] *Id.* at 92 ("Professor Rubenstein testified that his opinion was limited to duties under Rules 23 and 54. Rubenstein 4/9/18 Dep., p. 198: 21-24. He offered no opinion on duties that have their source elsewhere. I accept Professor Rubenstein's interpretation of the Rules of Civil Procedure.").

[10] Special Master's Report at 280 (emphasis added).

approval.[11] In doing so, the Special Master's Report explicitly states that it is relying upon the interpretation of that provision I provide in the class action treatise that I author (*Newberg on Class Actions*).[12] I cited and discussed this section in my report rebutting Professor Gillers's Report,[13] and, although the Special Master and his Counsel read from this short section at my deposition,[14] neither asked me about their proposed interpretation of Rule 23(e)(3). Accordingly, I have not had the opportunity to review and respond to it. I write now to do so and to ensure that my views are properly set forth in the record.

8. Rule 23(e)(3) states that "parties seeking approval [of a class action settlement] must file a statement identifying any agreement made in connection with the proposal."[15] In the *Newberg* Treatise (a) I first report that courts have not applied this provision to fee allocation agreements;[16] and (b) I then argue that they should consider doing so because "some agreements among counsel would impact settlement *terms* and hence should be disclosed to the class."[17] In the *Newberg* Treatise, I provide as an example a situation whereby "one set of counsel's fee

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[11] *Id*. at 305–09.

[12] *Id.* (discussing William B. Rubenstein, 5 *Newberg on Class Actions* § 15:12 (5th ed.)) (hereafter "Rubenstein, *Newberg on Class Actions*").

[13] Rubenstein Rebuttal Report at 4 & n.6; *see also id.* at 7 & n.20; *id.* at 29 & n.94; *id.* at 30 & n.100.

[14] *See, e.g.*, Rubenstein Dep. at 53:19–54:19.

[15] Fed. R. Civ. P. 23(e)(3).

[16] Rubenstein, 5 *Newberg on Class Actions, supra* note 12, at § 15:12 ("Courts generally do not read Rule 23(e)'s disclosure requirement as requiring disclosure of fee agreements among counsel on the ground that such agreements do not necessarily affect the class's interests.") (citing *Hartless v. Clorox Co*., 273 F.R.D. 630, 646 (S.D. Cal. 2011), aff'd in part, 473 Fed. Appx. 716 (9th Cir. 2012) ("The allocation of . . . fees amongst class counsel does not affect the monetary benefit to class members.")).

[17] *Id.* (emphasis added).

allocation was capped at a certain amount, [such] that counsel would have less interest in pushing further on behalf of the class once her cap was met."[18]

9. The Special Master's Report embraces my approach and, applying it, concludes (a) that Rule 23(e)(3) should legally govern Lead Counsel's actions in 2016[19] and (b) that the Rule factually applies to Lead Counsel's "pre-existing agreement to pay Chargois."[20]

10. The Report's application of Rule 23(e)(3) to the facts of this case embodies what I see as three separate errors, two of law, one of fact:

- *Not Law*. No court has ever read Rule 23(e)(3) to apply to fee allocation agreements, to the best of my knowledge. In the *Newberg* Treatise I cite the only reported case that I found on the topic, a case holding that the provision did ***not*** entail disclosure of the fee allocation agreements.[21] The Special Master's Report cites to no authority other than my Treatise section referencing this single case that does not support its reading of the law.

- *Not Appropriate Legal Standard*. No court or other authority has ever articulated the standard that the Special Master's Report utilizes in applying Rule 23(e)(3). In the *Newberg* Treatise, I argue that 23(e)(3)'s requirement that counsel disclose *settlement*-related agreements should be read to apply to *fee* agreements that "***impact settlement terms***."[22] I adopted that language from the Advisory Committee Notes, which state that Rule 23(e)(3) is meant to apply to agreements that, "although seemingly separate, may have influenced ***the terms of the settlement*** by trading away possible advantages for the class in return for advantages for others."[23] The *Manual for Complex Litigation* similarly states that: "The spirit of Rule 23(e)(2) is to compel identification of any agreement or

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[18] *Id*.

[19] Special Master's Report at 306–09. Lead Counsel submitted the proposed settlement agreement for preliminary judicial approval on July 26, 2016. ECF No. 91.

[20] Special Master's Report at 309.

[21] *Id*. (discussing *Hartless v. Clorox Co*., 273 F.R.D. 630, 646 (S.D. Cal. 2011), aff'd in part, 473 Fed. Appx. 716 (9th Cir. 2012) ("The allocation of … fees amongst class counsel does not affect the monetary benefit to class members.")).

[22] Rubenstein, 5 *Newberg on Class Actions, supra* note 12, at § 15:12 (emphasis added).

[23] Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2003 amendment (emphasis added).

understanding that might have affected the interests of class members by altering what they may be receiving or foregoing. Side agreements might indicate, for example, that ***the settlement is not reasonable*** because they may reveal additional funds that might have been paid to the class that are instead paid to selected claimants or their attorneys."[24] The Special Master's Report employs a standard (using quotation marks) that Rule 23(e)(3) applies where an agreement "allocates money that the class members may have received elsewhere."[25] Although the source of the quoted language is not provided, it appears to come from the *Hartless* case, which explicitly held that Rule 23(e)(3) does not apply to fee allocation agreements.[26] Moreover, the Report's standard is completely untethered from any connection to the ***settlement terms***, which is the subject of Rule 23(e)(3), and it is therefore so overbroad that it lacks meaning. All attorneys' fees in a common fund case come out of the class's recovery and are monies that "could otherwise be allocated to the class members." The purpose of Rule 23(e)(3) is to identify the sub-set of fee agreements that may have impacted the ***settlement's terms***, such as the agreements in the *Agent Orange* case that created conflicts between class counsel and the class.

- *Absence of supporting facts*. Because I advocate for application of Rule 23(e)(3)'s disclosure requirement to situations where fee agreements have impacted ***settlement terms***, at my deposition I repeatedly, and at length, testified that, to me, the key question about the Chargois Arrangement was whether it had in fact impacted the class's interests.[27] I suggested that the fact-finder consider

[24] Federal Judicial Center, *Manual for Complex Litigation, Fourth* § 21.631 (2004).

[25] Special Master's Report at 308; *see also id.* at 356. The Report elsewhere employs a similar locution without quotation marks. *Id*. at 278, 307, 355.

[26] The *Hartless* court wrote: "As explained in the Manual of Complex Litigation, [Rule 23(e)(3)] requires disclosure of agreements that may affect the interests of the class members *by allocating money that they may have received elsewhere*. . . ." *Hartless*, 273 F.R.D. at 646 (emphasis added). But in applying that language, *Hartless* held that Rule 23(e)(3) did ***not*** apply to fee allocation agreements because "[t]he allocation of [aggregate] fees amongst class counsel does not affect the monetary benefit to class members." *Id.*

[27] The following six passages are exemplary:

Rubenstein Dep. at 53:10–13 ("[F]ee agreements should be disclosed in part to make sure that the class hasn't been harmed by some agreements that have been made with respect to fees.").

Id. at 58:13–14 (characterizing the "class' interest" as "the most important thing at the end of the day").

Id. at 75:21–76:5 ("[W]hen you discovered the Chargois payment, I think you did discover something about the allocation. I nonetheless, like you, asked myself do I think this harmed the

such questions as (a) whether the Chargois Arrangement impacted the manner in which the lawyers litigated and settled the class's claims; (b) whether the Chargois Arrangement impacted the level of fees that the lawyers sought to impose on the class; and (c) whether the Arrangement embodied an inherent conflict of interest between counsel and the class,[28] as in the *Agent Orange* case upon which Professor Gillers extensively relied.[29] Subsequently, (a) the Special Master's Report characterized the class's relief in this case as "an excellent result;"[30] (b) the Special Master's Report concluded that the attorney's fee award was "not disproportionate or unsupportable when measured against the positive result for the class and the attorneys' effort and skill that was required to achieve it;"[31] and (c) Professor Gillers concluded that "the particular fee agreement in *Agent Orange* created potential conflicts that the Chargois Arrangement did not."[32] The Special Master's Report nonetheless concludes that Rule 23(e)(3) compelled Lead Counsel to disclose the allocation of fees to Damon Chargois because that money could have gone to the class.[33] This is neither an application of Rule 23(e)(3)'s settlement-impact standard nor a finding of fact (nothing in the

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class in the way the second circuit asked in the Agent Orange case. Were the fee agreements such that it changed the mechanics of the litigation in ways that upset the class' interests?").

Id. at 77:18–23 ("The reason to disclose the fees is to make sure the class' interests weren't undercut in any way by the agreements that were made. And so the transparency and disclosure is a means to an end, and the end is making sure the class' interests weren't sold out in some ways.").

Id. at 181:23–182:4 ("[W]hen I look at the allocation from your point of view, the questions I'd ask – which I said earlier – are did the Chargois Arrangement – did the allocational arrangements pervert the incentives in representing the class.").

Id at 184:19–23 ("[W]hen I'm reverse engineering looking back from the end of the case, the questions I ask are similar to what I see the second circuit asking in Agent Orange. Did this pervert the incentives of the lawyers to the detriment of the class?").

[28] *See id.* at 55:10–58:14; *id* at 75:20–76:11; *id.* at 99:13–100:22; *id.* at 181:23–182:7; *id.* at 182:18–184:9; *id.* at 184:19–185:6.

[29] *See, e.g.*, Gillers Report at 69 (quoting *In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 216, 223 (2nd Cir. 1987)).

[30] Special Master's Report at 6.

[31] *Id*.

[32] *See* Gillers Supplemental Report at 82 n.87 ("I also agree that the particular fee agreement in *Agent Orange* created potential conflicts that the Chargois Arrangement did not.").

[33] Special Master's Report at 309 ("Here we have an *un*disclosed agreement to pay $4.1 million out of the settlement funds -- ***funds that could otherwise be allocated to the class members*** -- to an attorney who did no work on the case whatsoever.") (emphasis added); *id.* at 356 (same).

record is cited in support of it). Most notably, the Special Master's Report does not even stand behind it: remedially, the Report proposes to make Lead Counsel pay an amount equal to more than 80% of the Chargois money ***to other lawyers*** and only $700,000 – or less than one quarter of one percent of the $300 million settlement – to the class.

11. In sum, Rule 23(e)(3) leaves to class counsel the decision whether to disclose agreements "made in connection with the [settlement] proposal" to the Court. Here, the Special Master's Report concludes that Lead Counsel derogated its duties because it did not interpret that provision (a) in a way no court has ever before interpreted it (b) according to a standard unmoored from the Rule's purpose (c) on a factual record lacking any evidence that the payment impacted the settlement's terms (d) in a circumstance where the class's interest in the payment was, according to the Report's own conclusions, equivalent to about 0.23% of the settlement's value.

12. At several places, the Special Master's Report characterizes my testimony in more specific ways that I think bear correction:

- The Special Master's Report states that I find the rule requiring a Court to order disclosure of fee agreements to be "peculiarly written,"[34] but that was not my testimony. I testified that Rule 23(h)(2) could not be more clearly written.[35] I used the word "peculiar" in refer to the *notice* provisions of Rule 23.[36] I did so because there are two notice provisions (one for settlements, one for fees) that utilize different linguistic formulations: Rule 23(e)(1) states, as to settlements, that, "The court must direct notice in a reasonable manner to all class members

[34] *Id.* at 278 ("Although he admits that Rule 23 is 'peculiarly written,' relying on the plain language of Rule 23(h)(2)(B)(iv), Professor Rubenstein -- as he does with the duty to disclose to the Court itself -- contends that Labaton was under no duty to disclose the Chargois Arrangement to the class absent an order from the Court directing it to do so.") (footnote omitted).

[35] Rubenstein Rebuttal Report at 26 ("[T]he rule structure could not be clearer in setting forth precisely what a court needs to do should it desire to review underlying fee agreements: ask.").

[36] Rubenstein Dep. at 119:7–10 ("Rule 23 is actually peculiarly written, and it's different than the phrasing of who has the duty to give notice, whether it's the Court or the lawyers.").

who would be bound by the proposal,"[37] while Rule 23(h)(1), regarding fees, states, in a passive voice without reference to who shoulders this obligation, "Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner."[38]

- I testified that Rule 23(h)(2) places the burden on the Court to order the parties to disclose fee allocation agreements. The Special Master's Report states that I "conceded this is a lot to ask of the judge," and quotes a lengthy passage of my deposition in support of that statement.[39] In that passage, I testified that asking a court to be a fiduciary for absent class members is a heavy burden. By contrast, my testimony is clear that the more specific responsibility explicitly delegated to a court by Rule 23(h)(2) – to ask counsel to disclose fee agreements – is not difficult at all. In my Rebuttal Report I stated: "Absent Professor Gillers's tortured approach, it is really not much of an imposition for a court to ask, 'How are the fees being allocated?' as Rule 54(d)(2) proposes."[40]

- While I reported that Rule 23(h)(2) requires a Court to ask counsel to disclose fee agreements, the Special Master's Report states (several times) that I "place the entire blame for the nondisclosure of the Chargois payment in this case upon the Court."[41] I never once use the word "blame" in my Rebuttal Report or deposition. I do believe that the goal of transparency would have been served had the Court asked counsel to disclose their fee agreements. Thus, if the Court concludes that the absence of transparency caused harm to the class members, it is my testimony that such harm might have been avoided had the Court required disclosure of all fee agreements.

II.

The Special Master's Report Misreports and Misapplies the Law Regarding Contract Attorneys

13. In my July 31, 2017 Fee Declaration I (a) labeled so-called "staff attorneys" or "contract attorneys" as "non-partnership track attorneys" and opined that those employed in this case (b) were skilled attorneys (c) assigned billing rates comparable with those approved by

[37] Fed. R. Civ. P. 23(e)(1).

[38] Fed. R. Civ. P. 23(h)(1).

[39] Special Master's Report at 279–80.

[40] Rubenstein Rebuttal Report at 12.

[41] Special Master's Report at 306; *id.* at 355.

courts in a comparison set of other class action cases and (d) appropriately treated as attorneys in a lodestar cross-check submission, rather than as expense.[42]

14. With one important caveat noted in the succeeding paragraph, the Special Master's Report concurs with all four of these conclusions, stating (a) that "[r]ather than referring to them as staff attorneys, it would be more accurate to refer to them as 'non-partnership-track' attorneys;"[43] (b) that "these staff attorneys did much more than 'low-level' document review;"[44] (c) that the "staff attorney billing rates in the lodestar fee petition are generally reasonable;"[45] and (d) that "there is nothing impermissible about marking up an attorney's billing rate above 'cost' so long as the rate at which the attorney is billed is reasonable and commensurate with experience and the value of the work performed."[46]

15. The only exception to the Special Master's Report's full adherence to the position I articulated in my Fee Declaration is that it distinguishes between non-partnership *staff* attorneys and non-partnership *contract* attorneys, enabling the former to be treated as attorneys but the latter only as costs.[47] The Special Master's Report concedes that there was no distinction

[42] Rubenstein Fee Declaration at ¶¶ 34-38.

[43] Special Master's Report at 177.

[44] *Id.* at 177–78.

[45] *Id.* at 180.

[46] *Id.* at 177; *see also id.* at 182 ("[T]here is nothing disingenuous about billing clients at market rates for work performed by attorneys, whether traditional or non-partnership-track. That one attorney is on a partnership track while another is not is, in this context, a distinction without a difference. Quite simply, similar work justifies similar rates.") (citation omitted).

[47] *Id.* at 181–88. To respond to the Special Master's Report's distinction between these two types of lawyers, I employ its usage of the term "contract attorney" to apply to attorneys who perform the same work as "staff attorneys" but who are employed through agencies rather than directly by a law firm. *Id*. at 181 ("Included within the staff attorneys listed on Lieff's and

between staff attorneys and contract attorneys as to the work performed – each provided the same valuable service to the class.[48] As such, there is no obvious reason to distinguish their billing rates for lodestar cross-check purposes, much less to bill the former as attorneys and the latter as costs. The Special Master's Report premises its approach on its factual assumption that firms face *categorically* different costs in compensating the two types of lawyers and on its legal conclusion that a firm's entitlement to attorney's fees should turn on that distinction. The Report's approach embodies at least five errors of law and fact:

- *Not Law*. The Special Master's Report states that "legal and ethical rulings have not provided definitive guidance on [the] interesting issue . . . of whether contract attorneys should be passed along as a reimbursable expense rather than as a marked-up profit center."[49] That statement is inaccurate. Courts *have* provided definitive guidance: they are unanimously opposed to the Special Master's Report's approach. Numerous courts have explicitly rejected the argument that contract attorneys must be billed as a cost[50] and many other courts – far too

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Thornton's lodestar reports were four 'contract' attorneys who were hired by Lieff through one or more outside staffing agencies.").

[48] *Id.* at 183 ("[T]here is no intent to pass judgment on the merits of the work performed by those contract attorneys or their professional qualifications. Quite the contrary.").

[49] *Id.* at 187.

[50] *See* Rubenstein, *Newberg on Class Actions*, *supra* note 12, at § 15:41 n.5 (listing six exemplary cases); *see also City of Pontiac Gen. Employees' Ret. Sys. v. Lockheed Martin Corp*., 954 F. Supp. 2d 276, 280 (S.D.N.Y. 2013) ("[I]t is beyond cavil that law firms may charge more for contract attorneys' services than these services directly cost the law firm . . . ."); *In re Apollo Grp. Inc. Sec. Litig*., No. CV 04-2147-PHX-JAT, 2012 WL 1378677, at *7 n.2 (D. Ariz. Apr. 20, 2012) (rejecting an objection to the inclusion of contract attorneys in a lodestar cross-check and stating that "Class Counsel may recover fees paid to contract attorneys"); *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 264–65 (E.D. Va. 2009) (rejecting an objector's argument that contract attorneys should not be included in a lodestar for cross-check purposes and stating that "the Court has absolutely no trouble finding that the contract attorneys should be billed at market versus cost. They are part of the team brought in to benefit the class. Their contributions are of a similar nature to the attorneys who are in the firms retained by plaintiffs, and they should be compensated in that manner."); *cf. In re Gen. Motors ERISA Litig.*, No. 05-71085, 2008 WL 11399729, at *2 (E.D. Mich. Sept. 15, 2008) (reporting that court had previously rejected objectors' argument "that Class Counsel's use of contract attorneys was somehow improper, and, as a result, their hours should be excluded under the lodestar cross-check").

numerous to enumerate – have approved fee petitions that include contract attorneys in counsel's lodestar or lodestar cross-check submission.[51] By contrast, I am not aware of a single court in the United States that has ever held that contract attorneys must be billed to the client as a cost rather than included in the lodestar at the attorney's market rate.[52] The Special Master's Report cites only two cases in support of its approach – *Dial* and *Meredith*[53] – but when probed, neither actually supports that approach. In *Dial*, the lawyers voluntarily sought repayment for contract attorney time as a cost; the court did not require that they do so. In applauding the lawyers for doing so, the Court noted that this choice had relieved the Court of having to ascertain a proper billing rate for these attorneys.[54] What this means is that absent the lawyers' voluntary decision, the *Dial* Court would have treated these attorneys as lawyers, not as an expense. In *Meredith*, a large New York law firm (Weil, Gotshal & Manges LLP) represented the plaintiff class in an antitrust action. It too voluntarily sought reimbursement

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A number of these decisions rejecting the argument that contract attorneys may only be billed at cost explicitly reference the fact that class counsel retained the contract attorneys at issue from an agency, *e.g., In re Citigroup Inc. Sec. Litig*., 965 F. Supp. 2d 369, 394 (S.D.N.Y. 2013); *In re AOL Time Warner S'holder Derivative Litig*., No. 02 CIV. 6302 (CM), 2010 WL 363113, at *25 (S.D.N.Y. Feb. 1, 2010), while in many of the other cases that fact was made known to, or was likely known by, the court. In other words, counsel's retention of contract attorneys from an outside agency does not distinguish this case from this vast body of pertinent authority.

[51] *See, e.g.*, Rubenstein Fee Declaration at Ex. F (analyzing court-approved billing rates for contract attorneys in a dozen cases decided in two year period).

[52] To confirm the accuracy of this statement, my research assistants and I read through several hundred state and federal cases that are identified through Westlaw searches for the term "contract attorney!" in class action and non-class action fee petitions. We found none that require counsel to treat contract attorneys as an expense.

In the *Newberg* Treatise, I note that several courts have limited attorney's fees generally (not contract attorneys specifically) to costs in fee-shifting cases where the relevant fee statute utilizes cost-like language. Rubenstein, *Newberg on Class Actions*, *supra* note 12, at § 15:41 & n.4 ("[S]ome courts have suggested that when a statute provides for recovery of 'actual' expenses or expenses 'incurred,' attorneys should bill based on their actual rates, rather than the market rates."). This statutory limitation is not relevant in common fund fee cases decided under common law principles, such as this case.

[53] Special Master's Report at 187–88 (citing *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 671 (S.D.N.Y. 2015); *Dial Corp. v. News Corp*., 317 F.R.D. 426, 437 (S.D.N.Y. 2016)).

[54] *Dial*, 317 F.R.D. at 438 ("[T]his Court appreciates Counsel's decision to treat these contractor fees as an expense. It saves the Court from having to determine a correct spread between the contract attorney's cost and his or her hourly rate and his or her salary.").

for contract attorneys at cost,[55] but in doing so, it was careful to explain to the Court that this was a deviation from the firm's usual practice.[56] What this means is that absent the lawyers' voluntary decision, the large corporate firm in *Meredith* would have treated these attorneys as lawyers, not as an expense. Accordingly, *Meredith* actually provides a data point showing that in the private market Weil Gotshal serves, contract attorneys are normally charged as lawyers, not costs, to paying clients.

- *Not Appropriate Legal Standard.* Courts have never premised the right to attorney's fees on the level of an attorney's employment benefits and it would be bad public policy to begin to do so, particularly in the context of an informal lodestar cross-check.[57] Such an approach would involve courts in innumerable line-drawing questions – How many benefits are enough? Which ones? Why those? – all about employment indicia that are irrelevant. These indicia are irrelevant because it is not the presence or absence of employment benefits that

[55] The firm attributed the limitation to, *inter alia,* the non-profit nature of its named plaintiff in the case and to the plaintiff's concurrent agreement to pay it "additional compensation" upon a favorable settlement, which turned out to be $1 million over and above the fees billed to the class. *See* Declaration of R. Bruce Rich in Support of Class Counsel's Motion for Award of Attorney's Fees and Expenses, ECF No. 209 at ¶¶ 4–6, *Meredith Corp. v. SESAC, LLC*, Case No. 1:09-cv-09177-PAE (S.D.N.Y. filed November 20, 2014).

[56] *See* Memorandum of Law in Support of Class Counsel's Motion for Award of Attorney's Fees and Expenses, ECF No. 208 at 14 & n.11, *Meredith Corp. v. SESAC, LLC*, Case No. 1:09-cv-09177-PAE (S.D.N.Y. filed November 20, 2014) (noting that "[b]ased on the normal rates that Class Counsel would have charged absent the fee accommodations made to the [lead plaintiff]" its lodestar would have been $17.4 million, but with the "fee accommodations" it was $11.8 million, and describing one of four fee accommodations as the fact that "the lodestar does not include the time of third-party contract attorneys performing document review analysis for discovery under the supervision of Class Counsel," thus implying that absent this accommodation, the firm would have "normally" included contract attorney time in normal bill to client) (citing *In re Citigroup Inc. Sec. Litig*., 965 F. Supp. 2d 369, 394-95 (S.D.N.Y. 2013) (courts "regularly appl[y] a lodestar multiplier to contract attorneys' hours") (citing *Carlson v. Xerox Corp*., 596 F. Supp. 2d 400, 409 (D. Conn. 2009), *aff 'd*, 355 F. Appx. 523 (2d Cir. Dec. 9, 2009))).

[57] As I noted in my Fee Declaration, "Courts in nearly every Circuit have noted the summary nature of the lodestar cross-check. *See* [Rubenstein, *Newberg on Class Actions, supra* note 12, at § 15:86 n.13] (collecting cases, including cases from within this Circuit) (citing, *inter alia*, *In re Tyco Intern., Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 273 (D.N.H. 2007) ("'The lodestar cross-check calculation need entail neither mathematical precision nor bean-counting.'" (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306 (3d Cir. 2005), as amended, (Feb. 25, 2005))))." Rubenstein Fee Declaration at 10 n.12.

makes a lawyer a lawyer: it is the work that is being performed.[58] Here, there is no question that the contract attorneys provided meaningful legal services to the class.

- *Modest – and Irrelevant – Factual Distinction.* Contract attorneys may be less distinct from full-time employees than the Report suggests. A firm may well house contract attorneys on-site during the duration of their work, hence paying (often expensive) real estate overhead – and related workplace benefits such as on-site food – for such lawyers. The law may require firms to provide overtime pay[59] and unemployment benefits[60] to contract attorneys, and of course firms must abide by federal and local laws prohibiting discrimination in retaining and working with contract attorneys.[61] Moreover, as contract attorneys likely form an attorney-client relationship with the underlying client,[62] the firm's retention of them may just as likely impact malpractice insurance costs. Contract attorneys are a good data point in support of the adage that there is no such thing as a free lunch. Conversely, in today's current legal practice, firms have entered into far more flexible arrangements with associates and staff attorneys: for instance, partnership track attorneys often work reduced hours (perhaps thereby removing themselves from certain benefits or legal requirements) and/or work off-site or without permanent office space. To the best of my knowledge, private firms

[58] *In re Tyco*, 535 F. Supp. 2d at 272 ("An attorney, regardless of whether she is an associate with steady employment or a contract attorney whose job ends upon completion of a particular document review project, is still an attorney. It is therefore appropriate to bill a contract attorney's time at market rates and count these time charges toward the lodestar."); *Andrews v. Lawrence Livermore Nat. Sec., LLC*, No. C 11-3930 CW, 2012 WL 160117, at *2 (N.D. Cal. Jan. 18, 2012) ("Defendants provide no authority for the proposition that, for purposes of determining reasonable hourly rates, an attorney's status as a contract attorney, as opposed to his or her employment as an associate, is a proper substitute for evaluating an attorney's actual experience or skills.").

[59] *See, e.g.*, *Henig v. Quinn Emanuel Urquhart & Sullivan, LLP*, 151 F. Supp. 3d 460, 471 (S.D.N.Y. 2015) (rejecting argument that contract attorney was entitled to overtime pay pursuant to Fair Labor Standards Act and particular state labor law based on facts of case).

[60] *See, e.g.*, *In re Singhal*, 128 A.D.3d 1308 (N.Y. App. Div. 2015) (requiring class action firm to pay unemployment benefits for contract attorney).

[61] *See, e.g.*, *Simmons-Grant v. Quinn Emanuel Urquhart & Sullivan, LLP*, 915 F. Supp. 2d 498 (S.D.N.Y. 2013) (rejecting contract attorney's race discrimination case based on facts of case).

[62] *Abrams v. Se. Mun. Bonds Inc*., 138 F. App'x 88, 98 (10th Cir. 2005) ("The general rule is that a temporary or contract lawyer 'who performs legal services for or on behalf of clients of the firm is subject to duties to the firm's clients similar to those of lawyers generally, such as those of competence and diligence . . . and confidentiality. . . .'") (quoting Restatement (Third) of the Law Governing Lawyers § 9, comment g (2000)).

nonetheless continue to bill these attorneys at market rates, not as costs. Firms similarly bill summer law students – for whom they generally do not pay health care and retirement benefits – to their clients at market rates. These factual questions are complex and involve a court in inquiries irrelevant to the key concern – whether or not legal services are being provided to the client.

- *Modest – and Irrelevant – Financial Distinction.* Contract attorneys may be less costly than full-time employees, but in a more modest (and irrelevant) manner than the Report suggests.[63] The Special Master's Report states that "the vast majority of the ***staff*** attorneys were paid in the range of $40-$60 an hour, plus benefits,"[64] while it further found that "a firm . . . pays only a modest hourly fee for ***contract*** attorneys, sometimes less than $50 per hour."[65] In other words, the rates appear completely indistinguishable, but for the benefits. The Department of Labor reports that, with employment benefits, an employer pays an employee about 1.5 times the employee's base salary.[66] That means that the $50/hour ***staff*** attorney costs the firm about $75/hour, while the $50/hour ***contract*** attorney costs the firm, say, $55/hour[67] for the reasons outlined in the prior bullet point. It is not immediately obvious what the major distinction is between two employees doing the same work, one at $55/hour and the other at $75/hour, that requires the former to be charged as a cost while the latter is charged at a lawyer's market rate. It cannot be the pure number alone: the Supreme Court has long held that paralegals may be billed to a client as legal professionals at their market rate and

[63] Special Master's Report at 185 ("While an inherent markup on attorneys' fees may apply to non-partnership track attorneys who are employees of a firm, such a markup *grossly distorts* the financial burdens of hiring true 'temporary' or contract attorneys.") (emphasis added); *see also id.* at 184 ("Given the *considerable* economic benefits realized by those firms that hire contract attorneys in a large class action case, such as *State Street*, law firms that realize such a benefit should distinguish the costs of contract attorneys from those of staff attorneys who perform the same or similar work on a matter when seeking reimbursement of fees and expenses.") (emphasis added).

[64] *Id.* at 177 (emphasis added).

[65] *Id.* at 187 (emphasis added).

[66] *See* U.S. Department of Labor, Bureau of Labor Statistics, *Employer Costs for Employee Compensation – March 2018*, available at https://www.bls.gov/news.release/pdf/ecec.pdf (reporting that wages and salaries averaged $24.77 per hour worked, while benefits averaged $11.55, for an average employee compensation of $36.32; meaning that the full package ($36.32) was 1.4663 times the wages ($24.77)).

[67] The $55/hour estimate is less than 1.1111 times the $50/cost, or about ¼ of the (1.4663) markup of the staff attorney.

need not simply be passed on as costs,[68] yet, paralegal hourly rates are, of course, lower than those of contract attorneys. For this reason, those courts that have expressed concerns about class counsel's handling of contract attorneys have treated the question as of one of degree not type, adjusting the pertinent hourly rate but rejecting the argument that the contract attorneys be passed through as a cost.[69]

- *Distinct from Multiplier Analysis.* The Special Master's Report misconceives the purpose of a lodestar cross-check submission in arguing that "if a firm pays an agency $40/hour for a contract attorney but claims $400/hour for that contract attorney on its lodestar, and then obtains a 2.0 multiplier, the actual recovery rate for this contract attorney is $800/hour -- or twenty times what the firm paid for the attorney."[70] The Court in this case awarded class counsel 25% of the common fund; counsel's lodestar was submitted solely for cross-check, or verification purposes, and showed that the 25% award was about twice counsel's lodestar. This enabled the Court to ascertain whether a 1.8 multiplier was appropriate given the risks counsel took and the rewards it obtained for the class. The Court's conclusion that the 1.8 multiplier was justified did not mean that class counsel

[68] *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 285–87 (1989) (holding that the primary federal fee-shifting statute enables recovery for paralegal time at market rates because when "the prevailing practice in a given community [is] to bill paralegal time separately at market rates," a reasonable attorney's fee should include compensation for those hours at those market rates).

[69] *See, e.g.*, *In re Polyurethane Foam Antitrust Litig.,* 168 F. Supp. 3d 985, 1013 (N.D. Ohio 2016) (accepting the argument that contract attorneys could be billed as lawyers, rather than cost, but reducing their billing rate); *Pennsylvania Pub. Sch. Employees' Ret. Sys. v. Bank of Am. Corp*., 318 F.R.D. 19, 27 (S.D.N.Y. 2016) (expressing concern about contract attorney rates and concluding that "[c]onsidering all the circumstances, the simplest resolution is to reduce the lodestar multiplier from 1.5 to 1.2"); *In re Citigroup Inc. Sec. Litig.,* 965 F. Supp. 2d at, 394–95 (rejecting the argument that contract attorneys should be treated as cost but reducing their hourly rate to $200 for lodestar cross-check purposes); *City of Pontiac,* 954 F. Supp. 2d at 280 (rejecting an argument that contract attorneys should be treated as cost but reducing the total fee award based in part on the argument that a private client would have negotiated a lower billing rate for contract attorneys); *In re UnitedHealth Grp. Inc. PSLRA Litig*., 643 F. Supp. 2d 1094, 1105 (D. Minn. 2009) (rejecting objections to the use of contract lawyers but applying a reduced rate to their work for lodestar cross-check purposes)*In re Polaroid*, No. 03 CIV. 8335 (WHP), 2007 WL 2116398, at *3 (S.D.N.Y. July 19, 2007) (approving lodestar multiplier computed after adjusting contract attorney rates to paralegal levels). *Cf. In re Beacon Assocs. Litig*., No. 09 CIV. 3907 CM, 2013 WL 2450960, at *18–19 (S.D.N.Y. May 9, 2013) (noting that, while low-cost contract attorneys should perform document review, their pay should not be marked up "ten times," but declining to reduce rates counsel employed in lodestar cross-check because it would be "unfair to impose such a rule *ex post facto*").

[70] Special Master's Report at 188.

> received $800/hour for contract attorneys. It meant that the 25% fee was justified. The two parts of the lodestar cross-check analysis are independent of one another: the first aims to ascertain the proper lodestar so as to gauge the extent to which the proposed percentage award embodies a multiplier, and the second aims to assess whether that particular multiplier is appropriate in the circumstances of the given case. Understanding this distinction, courts have explicitly rejected the argument that contract attorney time cannot be multiplied.[71]

16. In sum, it is my expert opinion that (a) no court has ever required class counsel to bill contract attorneys at cost rather than as lawyers; (b) it would be bad public policy to premise the right to an attorney's fee on the indicia of the employment relationship rather than on the services being provided to the client; this is especially true in that the (c) factual and (d) financial distinctions between the contract and non-contract attorneys are differences in degree, not differences in kind; and (e) treating contract attorneys as lawyers does not produce a windfall for class counsel so long as the multiplier is consistent with the normal range of multipliers.

III.
The Special Master's Report Miscomprehends the Nature of a Lodestar Cross-Check and Errantly Proposes That LCHB "Repay" Monies They Were Never "Paid"

17. The Special Master's Report identifies two issues with the lodestar cross-check submission – the double-counting issue and the contract attorney issue – and for each it

[71] *See, e.g.*, *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d at 394 ("[Objector] contends (1) that the contract attorneys should be treated as a litigation cost and not included in the lodestar at all, and (2) that, if included, a lodestar multiplier cannot be applied to their work because to do so permits too high a markup. Neither argument prevails."); *Carlson v. Xerox Corp.*, 596 F. Supp. 2d 400, 409 (D. Conn. 2009), judgment aff'd, 355 Fed. Appx. 523 (2d Cir. 2009) ("[T]he court concludes that it is not objectionable per se in this case to apply a multiplier to a lodestar that includes work performed by contract attorneys, even though the profit margin for the firms employing them was greater than the profit margin the firms would have had for work done by full-time employees."); *In re WorldCom, Inc. Sec. Litig.*, No. 02 CIV 3288(DLC), 2004 WL 2591402, at *21 (S.D.N.Y. Nov. 12, 2004) (rejecting objector's argument that "no multiplier is appropriate for certain work such as document review work done by contract attorneys").

recommends "disgorgement" of the amounts at issue: $4,058,000 for the double-counting[72] and $2,244,383 for the contract attorneys.[73] The Special Master's Report errs in recommending these remedies as it confuses the nature of a lodestar cross-check, applied in this case, with a lodestar based fee, not at issue here.

18. As I explained in my Fee Declaration,[74] and at my deposition,[75] courts employ one of two methods in awarding fees in class action lawsuits: a percentage method or a lodestar method. According to the former, counsel are awarded some portion of the class's recovery; according to the latter, counsel are paid for their time, with a court assessing the number of hours they worked and the rates attributable to those hours. Since the early 1990s, most courts have used the percentage method in large common fund cases like this one, although about half the courts that do so ensure that the percentage that is awarded is not too great by "cross-checking" it

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[72] *Id.* at 364 ("The remedy for this is the disgorgement by all three firms in equal amounts of the entire approximately $4,058,000 in double-counted time. It is recommended that this entire amount be returned to the class.").

[73] *Id.* at 367–68 ("The seven contract attorneys, all retained by Lieff, recorded 2833.5 hours in this role, at rates varying between $415 and $515. The total billings for contract attorneys was approximately $1.3 million ($1,325,588). In addition, a multiplier of 1.8 was added to their hours and rates, yielding a total award of $2.4 million ($2,386,058) for the time of the contract attorneys. This amount should be disgorged and returned to the class. The Customer Class is, however, entitled to claim the contract attorneys as an expense calculated at a more reasonable rate of $50/hour. The Special Master recommends that the difference between these two figures also be awarded to the class.").

I literally do not know what this passage means. It appears to intend to require payment of $2,386,058 to the class, but then to permit the class to be taxed $141,675 (or 2833.5 hours x $50 hour) as an expense, meaning the disgorgement would be $2,244,383 (or $2,386,058 less $141,675). But it concludes that this difference should "*also* be awarded *to the* class," *id.* at 368 (emphasis added), without it being at all clear what the "also" means. Regardless, as explained in the text, the whole approach is so erroneous these calculations are immaterial.

[74] Rubenstein Fee Declaration at ¶¶ 12–18.

[75] *See, e.g.,* Rubenstein Dep. at 188:22–194:7.

against counsel's lodestar. The lodestar cross-check enables a court to see how the percentage method's award compares to the time counsel have worked on the case, with a percentage award above the lodestar said to embody a positive multiplier and one below embodying a negative multiplier.

19. Because Counsel submitted their lodestar for cross-check purposes, not for the purposes of setting an exact fee based on the lodestar, any error in their lodestar calculation does not mean that the fee awarded was necessarily in error: the lodestar is a means not an end. The critical question is the effect that the lodestar error had on the cross-check. Specifically, reducing class counsel's lodestar (by, for example, fixing the double-counting and or removing the contract attorneys' time) will mean that the 25% fee award embodies a higher lodestar multiplier, which the Court will have to ensure is still reasonable. As I noted in my initial Declaration, correcting the double-counting issue by reducing counsel's lodestar adjusted their multiplier from 1.8 to 2.01, which in the context of this case was insignificant.[76] Here, if both the double-counted and the contract attorney hours are removed from counsel's lodestar, the 1.8 multiplier that the Court approved now becomes a 2.07 multiplier.[77] For the reasons I discussed at length in my Fee Declaration – utilizing empirical evidence of court-approved multipliers – this difference in the context of this case is not significant.[78] Put differently, given the remarkable success that Class Counsel achieved for the class – an accomplishment that the

[76] Rubenstein Fee Declaration at ¶18, ¶¶39–45.

[77] Counsel originally reported a $41.32 million total lodestar and then reported that deducting the double-counted hours resulting in a total lodestar of $37,265,241.25. ECF No. 116 at 3. If the contract attorney lodestar ($1,325,588) is further removed, the total lodestar becomes $35,939,653.25, and the $74,541,250 percentage award thus embodies a multiplier of 2.07.

[78] Rubenstein Fee Declaration at ¶18, ¶¶39-45.

Special Master recognizes[79] – a 25% fee award embodying a 2.07 multiplier is fully reasonable, indeed modest.

20. In suggesting that the lodestar errors be "disgorged" the Special Master's Report confuses information supplied for verification purposes with information supplied for payment purposes. In a case where a court employs the lodestar method to determine class counsel's fee, class counsel's submission of an hour of work at $500 means, if the court approves, that she will be paid $500 for that hour of work. If for some reason that hour is later disallowed, the $500 might properly be remanded. In a case where a court employs the percentage method to determine class counsel's fee, and uses the lodestar only for cross-check purposes, the reduction of an hour of time recalibrates the lodestar multiplier and requires further analysis of whether that lower amount can continue to sustain the requested percentage award. But it does not require the "repayment" of that hour of time since counsel was never "paid" for that hour of time; counsel were paid a percentage of the recovery. Numerous legal decisions have understood this distinction and, after adjusting a lodestar used for cross-check purposes downward, simply re-assessed whether the resulting higher multiplier remained reasonable.[80]

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[79] Special Master's Report at 6 (characterizing the class's recovery as "an excellent result").

[80] *See, e.g.*, *In re Polyurethane Foam Antitrust Litig.,* 168 F. Supp. 3d at 1013 (reducing lodestar in cross-check in part because of a contract attorney rate and then reassessing the appropriateness of the new multiplier); *In re: Cathode Ray Tube (CRT) Antitrust Litig*., No. 1917, 2016 WL 4126533, at *9 (N.D. Cal. Aug. 3, 2016) ("[E]ven if the Court were to reduce the Plaintiffs' lodestar to reflect the contract attorneys' lower billing rates, the multiplier that would result would still be well within an acceptable range. . . . A lodestar reduction is unnecessary when the effect on the multiplier is not material."); *In re Citigroup Inc. Bond Litig*., 988 F. Supp. 2d 371, 378 (S.D.N.Y. 2013) ("If the Court reduces the blended hourly rate for staff attorneys to $300—a rate that appears to be either appropriate or slightly high—the modified lodestar is approximately $73.5 million. Such a reduction would make the multiplier closer to 1.59. Assuming even a blended hourly rate for staff attorneys of $250—perhaps somewhat on the low end—the result is a modified lodestar of approximately $65 million and a multiplier of nearly 1.8. All of these

21. Given that the lodestar was submitted for cross-check purposes, there is simply no logic in the Special Master's Report's suggestion that class counsel "disgorge" roughly $4 million for the double-counting issue or that LCHB "disgorge" roughly $2.2 million for the contract attorney issue.

* * *

22. The Special Master's Report states that its intent "has been to identify true and unmistakable professional misconduct."[81] It is my testimony that this mark has not been met as to three pertinent findings: (1) that Rule 23(e)(3) required counsel to disclose the Chargois Arrangement upon submission of the settlement proposal; (2) that contract attorneys must be billed as costs not as lawyers in the lodestar cross-check submission; and (3) that counsel must "disgorge" monies when a court adjusts rates or hours in a lodestar cross-check submission. No law supports any of these three conclusions.

June 20, 2018 William B. Rubenstein

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figures are within the range of reasonableness. The lodestar cross-check has therefore performed its function, satisfying the Court that an award of 16%—which it has already determined represents a reasonable percentage of the settlement fund—adequately compensates plaintiffs' counsel for their time and effort based on estimations of reasonable market rates and factoring in an appropriate multiplier."); *Carlson*, 596 F. Supp. 2d at 409 ("[I]f the charges for the contract attorney time were decreased, the multiplier in this case would still be a reasonable multiplier."); *In re Royal Dutch/Shell Transp. Sec. Litig.*, No. CIV.A. 04-374 JAP, 2008 WL 9447623, at *32 (D.N.J. Dec. 9, 2008) ("Even if Lead Counsel reduces plaintiffs' counsel's total lodestar by $7,287,396.25 (the lodestar of the discovery attorneys employed by Lead Counsel)—from $56,891,317.50 to $49,603,921.25—that reduction increases the multiplier only from 1.002 (based upon the total fee of $57 million) to 1.15, an immaterial difference.").

[81] *Id.* at 376 ("[T]he Special Master would point out that the intent here has been to identify true and unmistakable professional misconduct . . . .").

EXHIBIT A

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, 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 EMPLOYEES SAVINGS AND PROFIT SHARING PLAN, on behalf of itself and JAMES PEHOUSHEK-STRANGELAND, and all others similarly situated, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 11-cv-11698 MLW

EXPERT DECLARATION OF WILLIAM B. RUBENSTEIN

1. I am the Sidley Austin Professor of Law at Harvard Law School and a leading national expert on class action law generally and class action fees in particular. The law firm Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser") has retained me to provide my expert opinion on several aspects of the fee petition that Counsel[1] submitted in this matter in September 2016, as corrected for the subsequently-found accounting errors. After setting forth my qualifications to serve as an expert and disclosing my prior relationship to this case and these firms (Part I, *infra*),[2] I provide the Special Master with empirical data and policy analysis to support the following four opinions relevant to analysis of the reasonableness of Counsel's 2016 fee request:

- ***Counsel's fee approach is the most widely used.*** (Part II, *infra*). Counsel's fee petition employed a percentage approach, provided the Court with information about their lodestar for cross-check purposes, and addressed a series of factors that courts have deemed relevant to the reasonableness inquiry. The percentage approach with a lodestar cross-check is the approach that courts most frequently use to assess the reasonableness of fee requests in common fund class action cases. It improves on the percentage approach standing alone (which could lead to a windfall for counsel) by making a rough comparison of the fee sought to

[1] Lead Counsel Labaton Sucharow LLP ("Labaton Sucharow") filed the fee petition for all the firms in the case. *See* Lead Counsel's Motion for an Award of Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs (ECF No. 102) at 2. In the accompanying brief, Lead Counsel specifies that, in addition to its firm, the term "Plaintiffs' Counsel" encompassed five other firms. *See* 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) at 8 n.2. The total lodestar in the case, however, encompasses work from three additional firms, or nine in all. *See* Declaration of Lawrence A. Sucharow in Support of (A) Plaintiffs' Assented-To Motion for Final Approval of Class Settlement and Plan of Allocation and Final Certification of Settlement Class and (B) Lead Counsel's Motion for An Award of Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs, Ex. 24 (ECF No. 104-24) at 2 (Master Chart of Lodestars, Litigation Expenses, and Plaintiffs' Service Awards). This Declaration uses the term "Counsel" as a short-hand reference to all of these firms.

[2] I typically provide a short synopsis of the litigation in my expert reports, but given the post-hoc nature of this report, I have not done so here.

counsel's time in the case. Simultaneously, it improves on the lodestar approach standing alone (which could bog the court down in review of counsel's time records) by enabling a check on the percentage approach without requiring an extensive audit of counsel's hours and rates.

- ***Counsel's billing rates were reasonable.*** (Part III, *infra*). Counsel's fee petition supplied the Court with billing rates for all professional time-keepers. Three sets of comparison data support the conclusion that the rates employed were reasonable: *first*, the rates are consistent with rates that courts in this community have awarded in approving class action fee petitions in recent years; *second*, Counsel's rates fall far below the court-approved rates charged by large corporate firms in bankruptcy cases in this market; and *third,* the blended billing rate for the entire case is consistent with blended billing rates in court-approved fee petitions in class action settlements in this community and in $100-$500 million cases throughout the country.

- ***Counsel appropriately billed non-partnership-track attorneys at market rates and the billing rates employed were reasonable.*** (Part IV, *infra*). Counsel employed non-partnership track attorneys to perform work such as document review and analysis. An empirical analysis of 12 recent cases in which courts have approved fee petitions containing rates for "contract" or "staff" attorneys shows that Counsel's rates for these non-partnership track attorneys are unexceptional: Counsel's blended rate is within pennies of the comparison set's average rate. Public policy also supports Counsel's billing of these non-partnership track attorneys at market rates, not cost, as empirical evidence shows that these attorneys were well-qualified for the legal work that they undertook and as billing at market rates is consistent with how law firms in the private market bill such attorneys, complies with the ABA's suggested ethical approach, and provides the right incentives for plaintiff firms.

- ***Counsel's fee was reasonable, as evidenced by the modest size of the lodestar multiplier***. (Part V, *infra*). The Court-awarded fee embodied a lodestar multiplier (based on Counsel's corrected lodestar) of 2.01. Three sets of data support the reasonableness of a fee that is roughly 2 times greater than Counsel's lodestar: it is below the mean for settlements of this size reported in the leading empirical analyses of class action fee awards, it is below the mean of a comparison group of $100-$500 million settlements, and it is fully consistent with the Court's characterization of the risks Counsel shouldered and the results that they achieved for the class herein.

I am aware of the fact that the fee petition in this case initially contained errors with regard to the lodestar cross-check information submitted to the Court. While those accounting errors were of

course unfortunate, their impact on the lodestar cross-check submission was relatively negligible and did not undermine the reasonableness of the fee Counsel proposed.

I.
BACKGROUND AND QUALIFICATIONS[3]

2. I am the Sidley Austin Professor of Law at Harvard Law School. I graduated from Yale College, *magna cum laude*, in 1982 and from Harvard Law School, *magna cum laude*, in 1986. I clerked for the Hon. Stanley Sporkin in the U.S. District Court for the District of Columbia following my graduation from law school. Before joining the Harvard faculty as a tenured professor in 2007, I was a law professor at UCLA School of Law for a decade, and an adjunct faculty member at Harvard, Stanford, and Yale Law Schools while a litigator in private practice during the preceding decade. I am admitted to practice law in the Commonwealth of Massachusetts, the State of California, the Commonwealth of Pennsylvania (inactive), the District of Columbia (inactive), the U.S. Supreme Court, six U.S. Courts of Appeals, and four U.S. District Courts.

3. My principal area of scholarship is complex civil litigation, with a special emphasis on class action law. I am the author, co-author, or editor of five books and more than a dozen scholarly articles, as well as many shorter publications (a fuller bibliography appears in my c.v., which is attached as Exhibit A). Much of this work concerns various aspects of class action law. Since 2008, I have been the sole author of the leading national treatise on class action law, *Newberg on Class Actions*, and as of this summer, I have re-written from scratch the entire 10-volume treatise. In 2015, I wrote and published a 600-page volume (volume 5) of the Treatise on attorney's fees, costs, and incentive awards; this volume has already been cited in

[3] My full c.v. is attached as Exhibit A.

numerous federal court fee decisions. For five years (2007–2011), I published a regular column entitled "Expert's Corner" in the publication *Class Action Attorney Fee Digest*. My work has been excerpted in casebooks on complex litigation, as noted on my c.v.

4. My expertise in complex litigation has been recognized by judges, scholars, and lawyers in private practice throughout the country for whom I regularly provide consulting advice and educational training programs. For this and the past seven years, the Judicial Panel on Multidistrict Litigation has invited me to give a presentation on the current state of class action law at the annual MDL Transferee Judges Conference. The Ninth Circuit invited me to moderate a panel on class action law at the 2015 Ninth Circuit/Federal Judicial Center Mid-Winter Workshop. The American Law Institute selected me to serve as an Adviser on a Restatement-like project developing the *Principles of the Law of Aggregate Litigation*. In 2007, I was the co-chair of the Class Action Subcommittee of the Mass Torts Committee of the ABA's Litigation Section. I am on the Advisory Board of the publication *Class Action Law Monitor*. I have often presented continuing legal education programs on class action law at law firms and conferences.

5. My teaching focuses on procedure and complex litigation. I regularly teach the basic civil procedure course to first-year law students, and I have taught a variety of advanced courses on complex litigation, remedies, and federal litigation. I have received honors for my teaching activities, including: the Albert M. Sacks-Paul A. Freund Award for Teaching Excellence, as the best teacher at Harvard Law School during the 2011–2012 school year; the Rutter Award for Excellence in Teaching, as the best teacher at UCLA School of Law during the

2001–2002 school year; and the John Bingham Hurlbut Award for Excellence in Teaching, as the best teacher at Stanford Law School during the 1996–1997 school year.

6. My academic work on class action law follows a significant career as a litigator. For nearly eight years, I worked as a staff attorney and project director at the national office of the American Civil Liberties Union in New York City. In those capacities, I litigated dozens of cases on behalf of plaintiffs pursuing civil rights matters in state and federal courts throughout the United States. I also oversaw and coordinated hundreds of additional cases being litigated by ACLU affiliates and cooperating attorneys in courts around the country. I therefore have personally initiated and pursued complex litigation, including class actions.

7. I have been retained as an expert witness in roughly 70 cases and as an expert consultant in about another 25 cases. These cases have been in state and federal courts throughout the United States, most have been complex class action cases, and many have been MDL proceedings. I have been retained to testify as an expert witness on issues ranging from the propriety of class certification to the reasonableness of settlements and fees. I have been retained by counsel for plaintiffs, for defendants, for objectors, and by the judiciary: in 2015, the United States Court of Appeals for the Second Circuit appointed me to brief and argue for affirmance of a district court order that significantly reduced class counsel's fee request in a large, complex securities class action, a task I completed successfully when the Circuit summarily affirmed the decision on appeal. *See In re Indymac Mortgage-Backed Securities Litigation*, 94 F.Supp.3d 517 (S.D.N.Y. 2015), *aff'd sub. nom. Berman DeValerio v. Olinsky*, 673 F. App'x 87 (2d Cir. 2016).

8. My past work encompasses prior *expert witness* work for and against a number of firms involved in this matter and current and past *legal work* on behalf of the Thornton Law Firm LLP (the "Thornton Fim"), including on an issue at the inception of this case. Specifically, in 2011, the Thornton Firm retained me to advise it on the representation of the class in this matter and the separate representation of the *qui tam* relators in actions against State Street and I worked with the firm in that capacity between February 24, 2011 and June 6, 2011. I am also currently assisting the Thornton Firm in a different complex litigation context, again on issues arising out of the representation of multiple parties that are un-related to the billing issues before the Special Master. Until Lieff Cabraser contacted me in March 2017 about the present retention, I had no other involvement in (or even knowledge of the progress of) this fee-related matter. The Thornton Firm has informed me that it has no objection to my appearing as an expert witness on the fee-related issues presently before the Special Master. I similarly believe that my duties to the Thornton Firm arising out of the unrelated 2011work on this case and my present work on an unrelated collateral matter do not interfere with my ability to provide my own independent expert opinions on the present fee-related matter, but I make this disclosure so that the Special Master has full information. Finally, as is more readily evident from the cases listed on my resume, Labaton Sucharow, Lieff Cabraser, and Keller Rohrback LLP ("Keller Rohrback") have each previously retained me as an expert witness in class action cases. I have also been retained as an expert witness by parties adverse to the Lieff Cabraser firm, or to Plaintiffs' Steering Committees on which it served, or to its clients in about five cases and I worked as court-appointed counsel against a group of plaintiffs' firms, including Lieff Cabraser, arguing for affirmance of a reduced fee award in the Second Circuit, as referenced in the prior paragraph.

9. I have been retained in this case to provide an opinion concerning the issues set forth in the first paragraph, above. I am being compensated for providing this expert opinion. I was paid a flat fee in advance of rendering my opinion, so my compensation was in no way contingent upon the content of my opinion.

10. In analyzing these issues, I have discussed the case with the counsel who retained me. I have also reviewed documents from this and related litigations, a list of which is attached as Exhibit B. I have also reviewed the applicable case law and scholarship on the topics of this Declaration.

11. Additionally, my research assistants, under my direction, have compiled four sets of data relevant to my analysis and ultimate opinions:

- a data set of 20 cases reflecting billing rates that judges in the District of Massachusetts – and in Massachusetts state courts – have approved in ruling on class action fee requests in the past dozen years (Exhibit C);
- a data set of six fee petitions containing 169 rates utilized by corporate firms in bankruptcy cases that Massachusetts bankruptcy courts have approved in recent years (Exhibit D);
- a data set of 20 class action settlements with aggregate settlement values of $100-$500 million (Exhibit E);
- a data set of 12 class action cases in which courts throughout the country have approved fee petitions that contain billing rates for "contract lawyers" or "staff attorneys" in recent years (Exhibit F).

II.
COUNSEL'S FEE APPROACH IS THE MOST WIDELY USED APPROACH TO FEES IN COMMON FUND CLASS ACITONS

12. Counsel sought a fee of approximately $74.5 million (ECF No. 102 at 2) and they demonstrated the reasonableness of that request according to a percentage approach (with

multiple factors) and a lodestar cross-check. (ECF No. 103-1). Empirical evidence shows that this is the most common approach courts take to fees.[4]

13. Specifically, the most fine-grained data of fee awards demonstrates that courts use a pure lodestar approach in 9.6% of cases, a pure percentage approach in 37.8% of cases, and a mix of the two (typically, a percentage approach with a lodestar cross-check) in 42.8% of cases, with another 9.8% of cases employing some other method or not specifying which method.[5]

14. I explain in the *Newberg* treatise how these current practices developed.[6] After adoption of the current class action rule in 1966, courts tended to employ a percentage approach to fees, but a 1973 decision of the Third Circuit endorsed an hourly approach, labeling it the

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[4] It is also consistent with the law in the First Circuit. In reporting on First Circuit law in the *Newberg* treatise, I wrote:

1. *Percentage or lodestar fee method.* The First Circuit gives its district courts discretion as to whether to use a percentage or lodestar method.
2. *Reasonableness review criteria.* The First Circuit has not identified any particular list of factors for assessing the reasonableness of proposed percentage awards in common fund cases, instead holding that the district courts—when employing the percentage method—should award fees on an individualized, case-by-case basis. District courts in the First Circuit have sometimes utilized the multifactor tests used in the Second and Third Circuits and at other times have employed the Seventh Circuit's market mimicking approach.
3. *Lodestar cross-check.* The First Circuit has held that a lodestar cross-check is entirely discretionary.

5 William B. Rubenstein, Newberg on Class Actions § 15:96 (5th ed.) (2015) (footnotes omitted) (hereafter *Newberg on Class Actions*).

[5] *See* 5 *Newberg on Class Actions, supra* note 4, at § 15:67 (reporting on data from Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical Legal Stud. 248, 272 (2010) (hereafter "Eisenberg and Miller II")).

[6] 5 *Newberg on Class Actions, supra* note 4, at § 15:64.

"lodestar" method,[7] and many courts began to utilize that method. In response to concerns engendered by the lodestar method, the Third Circuit convened a Task Force consisting of a cross-section of lawyers, judges, and scholars, all with expertise in the area of class action attorney's fees, to develop – in a neutral, non-investigatory setting – a set of best practices.[8] The Task Force concluded that a (negotiated) percentage method was the preferable approach for fee awards in common fund cases and many courts subsequently moved toward a percentage approach to awarding fees in common fund cases. By 2004, the *Manual for Complex Litigation* stated that "[a]fter a period of experimentation with the lodestar method … the vast majority of courts of appeals now permit or direct district courts to use the percentage-fee method in common-fund cases."[9] Yet, since the *Manual* made that statement, empirical evidence demonstrates that courts have moved to something of a hybrid: a percentage approach with a lodestar cross-check. Thus, in cases from 1993–2002, 56.4% of courts used the pure percentage, while in cases from 2003–2008 cases, only 37.8% did.[10] This is about a one-third decrease in the use of the pure percentage approach. The big gain was in courts' use of the mixed approach – it shot up about 75% from the first period to the second, growing from 24.3% of cases to 42.8% of cases.

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[7] *Lindy Bros. Builders, Inc. of Phila. v. American Radiator & Standard Sanitary Corp*., 487 F.2d 161, 168-69 (3d Cir. 1973).

[8] For a description of the Task Force's membership and methodology, see Report of the Third Circuit Task Force, *Court Awarded Attorney Fees*, 108 F.R.D. 237, 253-54 (1985).

[9] Federal Judicial Center, *Manual for Complex Litigation, Fourth*, § 14.121 (2004) (citations omitted).

[10] *See* 5 *Newberg on Class Actions, supra* note 4, at § 15:67 (reporting on data from Eisenberg and Miller II, supra note 5, and Theodore Eisenberg & Geoffrey P. Miller, Attorney Fees in Class Action Settlements: An Empirical Study, 1 J. Empirical Legal Stud. 27, 52 (2004) (hereafter "Eisenberg and Miller I")).

15. This approach is favored because it improves on either approach standing alone.[11] The percentage approach without a lodestar cross-check could lead to counsel securing a windfall. A lodestar approach standing alone could engross the court in an unnecessary audit of counsel's hours and rates, as the entire fee turns on the specific time billed. By contrast, using a lodestar cross-check enables a court to make a rough estimate of counsel's lodestar for the sole purpose of ensuring against a windfall.[12] A review of counsel's lodestar is appropriate, but over-emphasis on it – especially in a case of this magnitude, involving so many lawyers throughout the country – could bog the court down in unnecessary detail.

16. In a recent case in the California Supreme Court, I submitted my own *amicus* brief advocating for the Court to encourage the use of a lodestar cross-check. The Court embraced my brief, writing the following:

> The utility of a lodestar cross-check has been questioned on the ground it tends to reintroduce the drawbacks the 1985 Task Force Report identified in primary use of the lodestar method, especially the undue consumption of judicial resources and the creation of an incentive to prolong the litigation. We tend to agree with the amicus curiae brief of Professor William B. Rubenstein that these concerns are likely overstated and the benefits of having the lodestar cross-check available as a tool outweigh the problems its use could cause in individual cases.
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> With regard to expenditure of judicial resources, we note that trial courts conducting lodestar cross-checks have generally not been required to closely scrutinize each claimed attorney-hour, but have instead used information on attorney time spent to "focus on the general question of whether the fee award appropriately reflects the degree

[11] For a defense of the lodestar cross-check method, and a discussion of the points in this paragraph, see 5 *Newberg on Class Actions, supra* note 4, at § 15:86.

[12] Courts in nearly every Circuit have noted the summary nature of the lodestar cross-check. *See id.* at n.13 (collecting cases, including cases from within this Circuit) (citing, *inter alia*, *In re Tyco Intern., Ltd. Multidistrict Litigation*, 535 F. Supp. 2d 249, 273 (D.N.H. 2007) ("'The lodestar cross-check calculation need entail neither mathematical precision nor bean-counting.'" (quoting *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 306, 60 Fed. R. Serv. 3d 851 (3d Cir. 2005), as amended, (Feb. 25, 2005))).

> of time and effort expended by the attorneys." 5 Newberg on Class Actions, supra, § 15:86, p. 331. . . The trial court in the present case exercised its discretion in this manner, performing the cross-check using counsel declarations summarizing overall time spent, rather than demanding and scrutinizing daily time sheets in which the work performed was broken down by individual task. Of course, trial courts retain the discretion to consider detailed time sheets as part of a lodestar calculation, even when performed as a cross-check on a percentage calculation.
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> As to the incentives a lodestar cross-check might create for class counsel, we emphasize the lodestar calculation, when used in this manner, does not override the trial court's primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the potential fee award. If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment. Courts using the percentage method have generally weighed the time counsel spent on the case as an important factor in choosing a reasonable percentage to apply. (5 Newberg on Class Actions, supra, § 15:86, pp. 332–333. . .). A lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court's reasonableness determination; as such, it is not likely to radically alter the incentives created by a court's use of the percentage method.[13]

17. In sum, the percentage approach with a lodestar cross-check is, empirically speaking, the fee method courts utilize most often in common fund cases, and they do so for sound policy reasons. The approach Counsel took in its fee petition in this case was therefore fully consistent with normal practice in common fund class actions.

18. Because Counsel submitted their lodestar for cross-check purposes, not for the purposes of setting an exact fee based on the lodestar, the error in their lodestar calculation does not mean that the fee awarded was necessarily in error: the lodestar was a means not an end. The critical question is the effect that the lodestar error had on the cross-check. As Counsel reported in correcting it, the lodestar error meant that their multiplier in the case was approximately 2 rather than 1.8 (ECF No. 116 at 3). As I discuss below, utilizing empirical

[13] *Laffitte v. Robert Half Intern. Inc.*, 376 P.3d 672, 687-88 (Cal. 2016) (some citations omitted).

evidence of multipliers, this difference in the context of this case was not significant (Part V, *infra*). This is not, of course, to excuse the mistake. It is, rather, to place the mistake in its proper context.

III.
COUNSEL'S BILLING RATES WERE REASONABLE

19. To investigate the reasonableness of Counsel's billing rates, I utilize empirical evidence to generate three independent comparison sets:

- I compare the hourly rates for each timekeeper in this case to hourly rates that courts in this District (and in Massachusetts state court) have awarded in approving class action fee petitions in recent years.

- I compare the hourly rates for each timekeeper in this case to the hourly rates that defense firms charge for similar work in this market, as evidenced by rates Massachusetts bankruptcy courts have approved in recent years.

- I compare the blended billing rate for this case to the blended billing rate of other class action cases in this District and to other class action cases involving $100-$500 million settlement funds.

20. I have chosen to compare Counsel's billing rates to rates other class action (and bankruptcy) courts have approved because it is my expert opinion that such court-sanctioned rates provide the best comparison group. The primary reason they are the best comparable evidence is that class action attorneys make a living getting paid by their clients through court-approved fee petitions;[14] thus the "market" rates for their services are generally the rates that

[14] Given this fact, I found unambiguous the statements in this case's fee declarations that the "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, which have been accepted in other complex class actions." *E.g.*, 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 at ¶ 7 (Sept. 15, 2016). I read "regular rates charged" as meaning that these were rates submitted in class action fee petitions, a reading confirmed by the succeeding clause's statement that the rates had been "accepted [by courts] in other complex class actions."

courts approve for their services.[15] Other ways of assessing the reasonableness of the hourly rates in cross-check submissions include the following:

- Occasionally, lawyers will submit, and courts rely on, affidavits from other lawyers in the community about prevailing rates.[16] Such affidavits have the benefit of being sworn to under penalty of perjury, and therefore likely provide accurate reporting on the rates included in them, but they may not represent a fair cross-section of evidence given the manner in which they are produced.[17]

- Occasionally lawyers will present evidence collected from surveys such as the *National Law Journal* survey. A few courts have deemed survey evidence sufficient for lodestar cross-check purposes because the cross-check "does not involve bean counting or mathematical precision."[18] Nonetheless, survey evidence is notoriously unreliable for multiple reasons: (a) the survey drafters can skew answers – even inadvertently – simply in the way questions are drafted; (b) results are often reported by attorney type (junior associate, senior partner, etc.) and with bands of rates so that tailored comparisons are impossible; (c) survey respondents, unlike lawyers filing fee petitions, do not sign survey responses under the penalty of perjury; and (d) most problematically, surveys embody a selection bias in that they may neither be sent to nor responded to by an appropriate comparison group; this is particularly a problem in that (e) the nature, legitimacy, and transparency of the organization undertaking the survey – and the context in which the survey is taken – will have a significant effect

[15] For this reason, the Second and Ninth Circuit have criticized the Seventh Circuit's belief that there is some other market approach to class action attorney's fees. *See* 5 *Newberg on Class Actions*, *supra* note 4, at § 15:79 ("'[T]o the extent that a market analogy is on point, in most cases it may be more appropriate to examine lawyers' reasonable expectations, which are based on the circumstances of the case and the range of fee awards out of common funds of comparable size.'") (quoting *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1049–50 (9th Cir. 2002)).

[16] *See, e.g., Bellinghausen v. Tractor Supply Co*., 306 F.R.D. 245, 262 (N.D. Cal. 2015) ("[E]vidence of prevailing market rates may include affidavits from other area attorneys.").

[17] *Cotton v. City of Eureka*, 889 F. Supp. 2d 1154, 1167 (N.D. Cal. 2012) (finding declarations from other attorneys unhelpful for being too general); *Wilhelm v. TLC Lawn Care, Inc*., No. CIV. A. 07-2465-KHV, 2009 WL 57133, at *5 (D. Kan. Jan. 8, 2009) (agreeing with defendant's contention that "the affidavits of other plaintiffs' attorneys should be disregarded because they are self-serving" and "contradict plaintiffs' other evidence").

[18] *In re Schering-Plough Corp*., No. CV 08-397 (DMC)(JAD), 2013 WL 12174570, at *28 n. 27 (D.N.J. Aug. 28, 2013), report and recommendation adopted sub nom. *In re Schering-Plough Corp. Enhance Sec. Litig*., No. CIV.A. 08-2177 DMC, 2013 WL 5505744 (D.N.J. Oct. 1, 2013).

on who responds to the survey and how. Accordingly, courts are often quite skeptical of such evidence.[19]

- Occasionally courts rely on something called the *Laffey* Matrix[20] – particularly in fee-shifting cases in the District of Columbia – but this is a disfavored approach and one that I am quite critical of for a host of reasons.[21]

In short, as the goal of this endeavor is to ascertain proper billing rates for lawyers pursuing class action lawsuits, I agree with the many courts that have found that the best comparable evidence are rates that other courts have approved for class action work.[22]

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[19] *See In re: Sears, Roebuck & Co. Front-loading Washer Prod. Liab. Litig.*, No. 06 C 7023, 2016 WL 4765679, at *14 (N.D. Ill. Sept. 13, 2016) (noting "skepticism" amongst courts about applying survey rates that fail to differentiate large and small firms); *Forkum v. Co-Operative Adjustment Bureau, Inc.*, No. C 13-0811 SBA, 2014 WL 3101784, at *4 (N.D. Cal. July 3, 2014) (finding a fee survey "largely unhelpful in determining the reasonable hourly rates for the attorneys that worked on this case" because it is "not [a] reliable measure[] of rates in [the court's District] because [it] provide[s] no data on the prevailing hourly rates charged in this District"); *Lorik v. Accounts Recovery Bureau, Inc.*, No. 1:13-CV-00314-SEB, 2014 WL 1256013, at *2–3 (S.D. Ind. Mar. 26, 2014) (criticizing the "fairly obvious facial weaknesses" in a fee survey, such as insufficient sample size, lack of detailed geographical differentiation, and response bias, and finding "[t]he customary and judicially preferred standard by which the reasonableness of hourly rates is measured ordinarily comes from [evidence of rates charges by] . . . other lawyers who regularly practice in a particular geographical area and who provide similar or comparable legal services"); *California Durham v. Cont'l Cent. Credit*, No. 07CV1763 BTM WMC, 2011 WL 6783193, at *2 n.1 (S.D. Cal. Dec. 27, 2011) (finding a fee survey "is of limited usefulness because [it] does not beak down the hourly rates by region within California").

[20] The matrix originated in *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983).

[21] *See* 5 *Newberg on Class Actions*, supra note 4, at § 15:43.

[22] *See, e.g., Van Horn v. Nationwide Prop. & Cas. Ins. Co.*, 436 F. App'x 496, 498–99 (6th Cir. 2011) (noting that courts should determine reasonable hourly rates by looking to, *inter alia*, the rates used in analogous cases); *Plyler v. Evatt*, 902 F.2d 273, 277 & n.2 (4th Cir. 1990) (noting courts should weigh a fee applicant's hourly rates against the prevailing market rates in the relevant community, which looks to, *inter alia*, "attorneys' fee awards in similar cases"); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 262 (N.D. Cal. 2015) (noting evidence of prevailing market rates includes affidavits from area attorneys and "examples of rates awarded to counsel in previous cases"); *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 756 (S.D. Tex. 2008) (noting Fifth Circuit courts determine whether an hourly rate is reasonable by looking to affidavits from other attorneys in the community and "rates actually

Court-approved rates in Massachusetts class action cases

21. For purposes of this Declaration, I utilized a database of 481 fee rates contained in 20 class action fee petitions approved by federal and state courts in Massachusetts in recent years.[23] A list of these cases is attached as Exhibit C. For each timekeeper, my research assistants identified the timekeeper's initial year of admission to the bar either by using the information in the fee petition or, if the information was not listed therein, by examining the firm's website and/or the relevant state bar website. As the fee petition herein was submitted in 2016, we adjusted all hourly rates in prior cases to 2016 dollars using the U.S. Bureau of Labor CPI Inflation Calculator.[24] Once each timekeeper's experience level had been identified and all of the dollar amounts had been set at 2016 levels, we plotted the rates on an x-y axis, with the x-

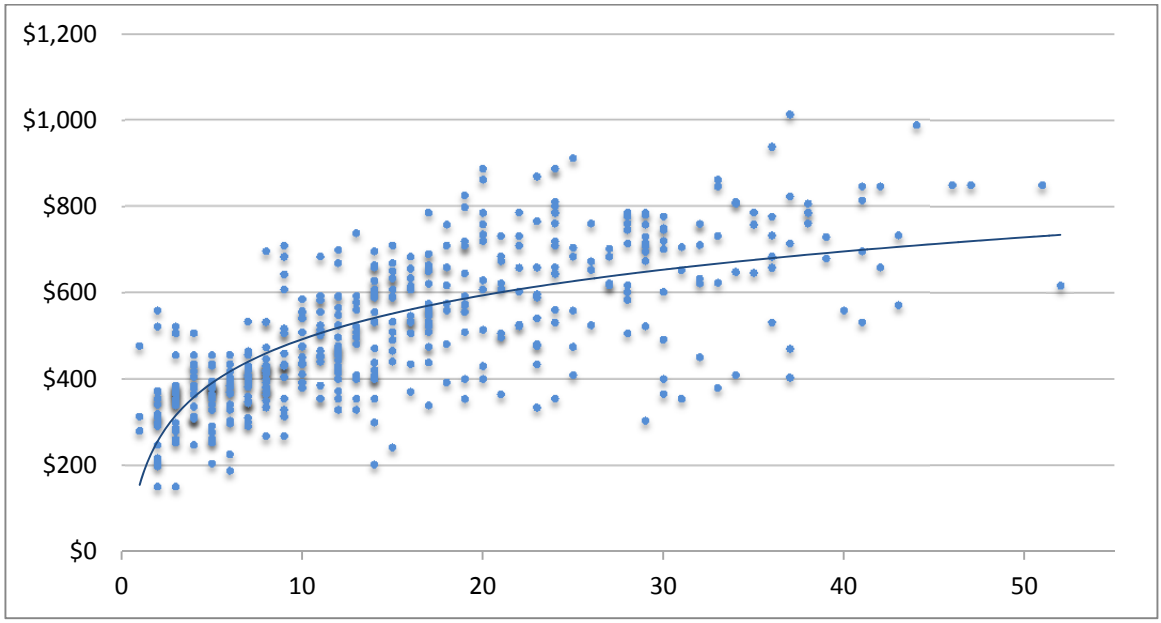
billed and paid in similar lawsuits"); *Faircloth v. Certified Fin. Inc*., No. CIV. A. 99-3097, 2001 WL 527489, at *10 (E.D. La. May 16, 2001) (looking to "decisions of other courts in this jurisdiction" to determine a proposed hourly rate was reasonable).

[23] I originally compiled this dataset for my 2016 work as an expert witness on attorney's fees in a case entitled, *Geanacopoulos v. Philip Morris USA Inc*., No. 98-6002-BLS1 (Mass. Super.). To do so, I searched for reported fee decisions of Massachusetts courts (state and federal) in class action cases. Employing a neutral search sequence on Westlaw, I identified a total of 54 decisions since January 1, 2005. I read through all 54 decisions; some were not class action cases, some were not fee decisions, and some did not enable a review of the utilized hourly rates. A total of 18 of the cases met all these criteria and became the baseline for my rate study. In some of these 18 cases, counsel sought an award lower than their total lodestar and/or the court made an award lower than the total lodestar. So long as the court did not express concern about counsel's proposed billing rates in affirming the fee request, I coded these rates as affirmed, or judicially-approved, rates and included them in the data set. If a court explicitly lowered a specific billing rate, I utilized the lower rate in the data set. For purposes of this Declaration, my research assistants updated that dataset in two ways: we added the rates employed in that prior case as the court approved that fee petition and we searched for newer cases using the same criteria and identified one such case to add to the database.

[24] This calculator can be found at this hyperlink: http://data.bls.gov/cgi-bin/cpicalc.pl. For each year prior to 2016, we calculated the differential between $1,000 in that prior year and $1,000 in 2016. We then used that differential to calculate the 2016 rate for the prior year. For example, the calculator showed that $1,000.00 in January of 2015 was equivalent to $1,013.73 in January of 2016. Accordingly, we multiplied all 2015 rates by 1.01373 to adjust them to 2016 values.

axis representing the years since the timekeeper's admission to the bar and the y-axis representing the timekeeper's hourly rate. The resulting scatter plot, set forth below in Graph 1, provides a snapshot of hourly rates in judicially-approved fee applications in Massachusetts; the blue logarithmic trend line sketches the trend of these rates across experience levels.

GRAPH 1
HOURLY RATES IN JUDICIALLY-APPROVED FEE APPLICATIONS IN MASSACHUSETTS CLASS ACTION CASES



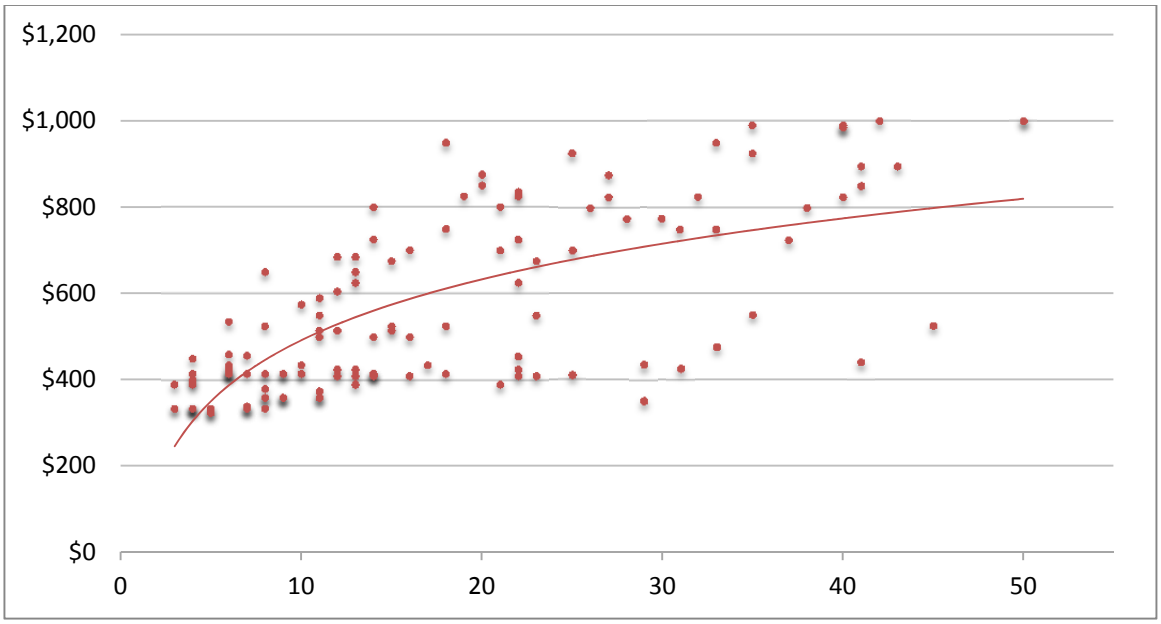
22. My research assistant next plotted the rates utilized by Counsel in this matter. Counsel supplied us with corrected lodestar data for three firms,[25] containing billing rates[26] for 103 lawyers. For the remaining six firms, we used the submissions they made at the time of the

[25] These are: Labaton Sucharow; Lieff Cabraser; and the Thornton Firm.

[26] Counsel utilize their current rates for all time spent in the litigation. The law supports using current rates as "an appropriate adjustment for delay in payment," *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989). In my experience, this is typically how this issue is handled. It is my opinion that it is reasonable for Counsel, who had not been paid in the nearly six years that this case was pending, to use current hourly rates as an adjustment for the delay in payment.

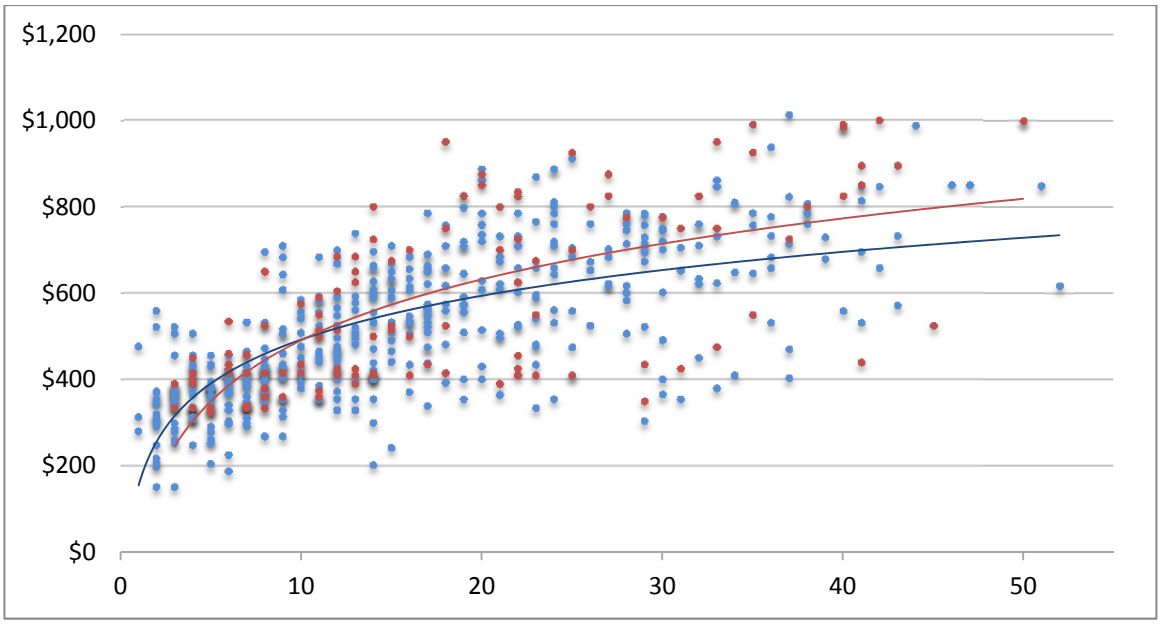
fee petition, which contained rates for 38 lawyers, bringing the total number in this data set to 141. After identifying the year of admission to the bar for each such timekeeper, we plotted these rates onto the same type of x-y axis that we had employed for the Massachusetts comparison set. The resulting scatter plot, set forth below in Graph 2, provides a snapshot of Counsel's billing rates, with the red logarithmic trend line sketching the trend of Counsel's rates across experience levels.

GRAPH 2
COUNSEL'S HOURLY RATES



23. Finally, we aggregated the data from Graphs 1 and 2 onto a single scatter plot that indicates the judicially-approved rates in Massachusetts with blue dots and a blue logarithmic line and Counsel's proposed rates with red dots and a red logarithmic line. These data appear in Graph 3, below.

GRAPH 3
COUNSEL'S HOURLY RATES COMPARED TO
HOURLY RATES IN JUDICIALLY-APPROVED FEE APPLICATIONS
IN MASSACHUSETTS CLASS ACTIONS



24. As Graph 3 demonstrates, the two logarithmic trend lines track one another closely. For lawyers with fewer than about 11 years of experience, Counsel's trend line lies below the trend line for rates in approved Massachusetts class action fee petitions, and then among more senior lawyers, Counsel's trend line rises slightly above the trend line of the comparison group. The proposed rates for 76 of Counsel's 141 lawyers (53.9%) are below the Massachusetts trend line. When the differences between the trend lines are compared at all 141 points, Counsel's trend line is, on average, 1.01% above the trend line for rates in approved Massachusetts class action fee petitions. This means that Counsel's proposed rates are, across the board, virtually identical to the rates that judges in Massachusetts have approved for similar work – other class action litigation – by similarly experienced attorneys.

25. The portion of Counsel's trend line that is above the comparison trend line exceeds the comparison by an average of 6.32%. That Counsel's trend line across their senior lawyers in this case is roughly 6% above the average lawyers' trend line makes perfect sense for two inter-related reasons. *First*, Labaton Sucharow, Lieff Cabraser, and Keller Rohrback are three of the leading class action firms in the United States, and the Thornton Firm is a premier firm in this market with a similar high profile throughout the country. The lawyers at these firms possess years of remarkable experience, have track records of superb achievement, and can be counted among the elite of the profession generally and this area of law specifically. As the comparison set picks up a range of approved class action cases in this community, it encompasses lawyers with far less expertise undertaking far more mundane matters. Indeed, *second*, one would expect higher than average billing rates in a case of this magnitude – a $300 million class action against one of the largest banks in the United States[27] and defended by one of the largest law firms in the United States.[28] Accordingly, if there is any surprise in the data it is only that the trend line across these senior lawyers is but 6% above the trend line of the wide swath of lawyers with different skill levels who are represented in the comparison group.

26. In comparing Counsel's rates to Boston rates, I have not adjusted the rates from the non-Boston firms in this case to Boston levels. I have not done so because this is a level of detail generally beyond what is undertaken for lodestar cross-check purposes.[29] In lodestar cross-check cases, courts occasionally cite the standard, borrowed from fee-shifting

[27] State Street Bank is #271 on the Fortune 500 in 2017. This data point is available at hyperlink: http://fortune.com/fortune500/state-street-corp/.

[28] Wilmer Hale is the 26th largest large firm by revenue in the United States. This data point is available at hyperlink: https://en.wikipedia.org/wiki/List_of_largest_law_firms_by_revenue.

[29] *See* note 12, *supra.*

jurisprudence, that rates should be "those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation."[30] I am not aware of any appellate decisions mandating this approach for lodestar cross-check purposes in common fund cases, and it is a step rarely undertaken.[31] Nonetheless, if I were to do so, the rates for most timekeepers would decrease: application of a judicially-endorsed approach to adjusting lawyer rates by geographic market[32] would require decreasing the San Francisco rates (Lieff Cabraser) by 8.3%, the New York rates (Labaton Sucharow) by 3.4%, and the Washington, D.C. rates (McTigue Law LLP, Zuckerman Spaeder LLP, Beins Axelrod PC) by 0.3%, while increasing the

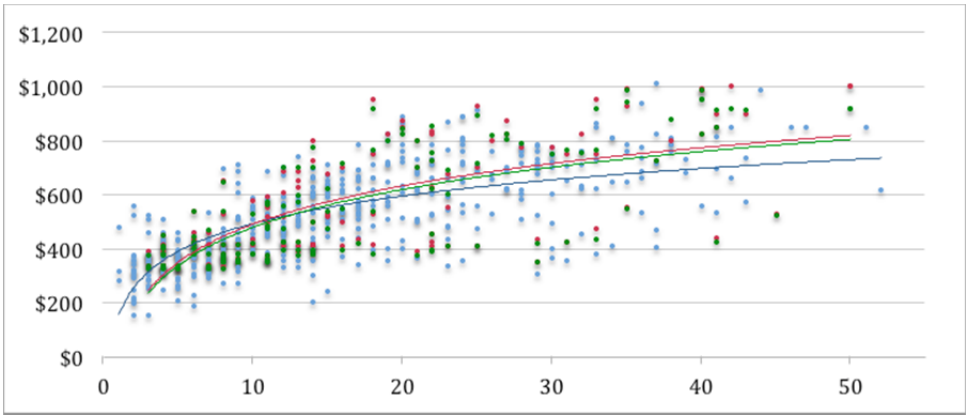
[30] *Martinez-Velez v. Rey-Hernandez*, 506 F.3d 32, 47 (1st Cir. 2007) ("Part of the fees calculation is the selection of an appropriate hourly rate for each attorney. Rates should be 'those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.'" (quoting *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984))).

[31] A search for the term "lodestar cross-check" in all federal cases returns 732 cases, while adding the phrase "and prevailing in the community for similar services" to the search returns a total of 51 cases. Of those 51 cases, only 11 involve a court holding that counsel should use local rates for purposes of a lodestar cross-check; nine of these 11 cases involve courts in the Eastern District of California insisting that lawyers from Los Angeles or San Francisco utilize Fresno rates. This means that outside of Fresno, a total of three of 732 reported cases (or .27%) in this search string insist upon geographic adjustment in the lodestar cross-check context (1.5% if Fresno is included). Even that miniscule percentage is likely exaggerated because there are thousands of lodestar cross-check decisions not reported on Westlaw and the reported cases likely select for aberrations of this type.

[32] I utilize the federal government's judicial differential methodology to adjust rates between different geographic markets, as set forth in *In re HPL Techs., Inc. Sec. Litig.*, 366 F. Supp. 2d 912, 921 (N.D. Cal. 2005). The federal government rates can be found at this hyperlink: http://www.uscourts.gov/careers/compensation/judiciary-salary-plan-pay-rates. The federal government increases the base rate by 26.73% for the Boston market, by 31.22% for the New York market, by 38.17% for the San Francisco market, by 27.10% for the D.C. market, by 24.24% for the Seattle market, and by 15.65% for the North/South Carolina market. This means that a base hourly rate of, say, $350/hour would be worth $443.56 in Boston ($350 x 1.2673) and $459.27 in New York ($350 x 1.3122). Therefore, one would have to multiply New York billing rates by 0.96579 ($459.27 x 0.96579=$443.56) to bring them down to Boston levels. The same conclusion can be achieved by the formula: <1-(1.2673/1.3122)>. I apply this approach for each market.

Seattle (Keller Rohrback) and South Carolina (Richardson Patrick Westbrook & Brickman LLC) rates by 2.0% and 9.6%, respectively. In Graph 4, below, these new geographically-adjusted rates are added to the prior graph: the Massachusetts-approved rates remain in blue, Counsel's unadjusted rates remain in red, and Counsel's rates adjusted to the Boston market appear in Celtic green. There is also a new green trend line for the geographically adjusted rates, but overall the rates drop so slightly that it is difficult to see the deviation of the green line's adjusted rates from the red line's unadjusted rates.

GRAPH 4
COUNSEL'S HOURLY RATES ADJUSTED TO BOSTON MARKET COMPARED TO COUNSEL'S UNADJUSTED HOURLY RATES AND HOURLY RATES IN JUDICIALLY-APPROVED FEE APPLICATIONS IN MASSACHUSETTS CLASS ACTIONS



Put most simply, adjusting for geography, Counsel's overall lodestar decreases by a total of 3.18%. While this means that Counsel's lodestar multiplier simultaneously increases, the increase is so small – from 2.01 to 2.07 – that the multiplier remains well within the range of reasonableness, as discussed below.[33] The small and immaterial effect of all this (geographic-

[33] *See* Part V, *infra.*

correction) work is precisely the reason that courts do not demand that it be undertaken in the cross-check setting.

27. In sum, the prior paragraphs demonstrate empirically that the rates that Counsel utilized in their lodestar cross-check submission in September 2016 were fully consistent with rates courts in Boston had explicitly or implicitly approved in awarding fees in class action cases.

Defense Firm Rates

28. Another relevant set of data concerning rates "prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation,"[34] is the set of rates charged by large corporate defense firms. It is these large corporate firms – like Wilmer Hale in this case – that defend significant class action cases like this one; these firms therefore provide the services most comparable to the services that the plaintiffs' lawyers provide in these cases, utilizing reasonably comparable skills and calling on reasonably comparable experience.[35] Since corporate firms typically have private fee arrangements with their clients, the most public – and reliable – evidence of the rates that these firms charge appears in fee petitions submitted by them in bankruptcy cases.[36] For purposes of this Declaration, I

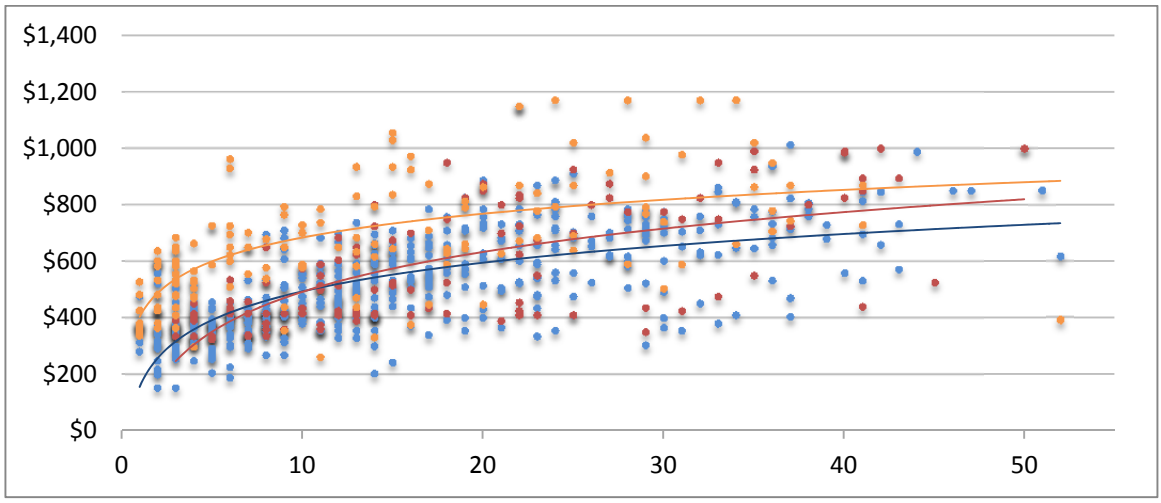
[34] *Martinez-Velez*, 506 F.3d at 47.

[35] There are of course some differences between plaintiff firms running large complex class actions and defendant firms defending such cases, but what is not different is that the two sets of firms are litigating the same cases against one another.

[36] I find these rates the most reliably comparable for four independent reasons. *First*, unlike rates reported in publications like the *National Law Journal*, these rates are provided lawyer-by-lawyer, not in ranges based on job types (like junior associates, or senior associates). *Second*, counsel seeking court approval for these rates swear to their accuracy. *Third*, in the bankruptcy context, the petitioning lawyers specifically represent that the rates they are using are the same rates that they use outside of the bankruptcy context. *See* 11 U.S.C. § 330(a)(3) (directing bankruptcy courts awarding attorneys' fees to take into account "all relevant factors, including . . . whether compensation is reasonable based on the customary compensation charged by

utilized a database of 169 fee rates contained in six fee petitions approved by bankruptcy courts in Massachusetts in five cases in recent years.[37] A list of those cases is attached as Exhibit D. Using orange dots and an orange logarithmic trend line, we plotted these rates (adjusted to 2016 dollars) onto the same x-y axis that contained the Massachusetts approved rates (in blue) and Counsel's rates (in red). The results are reflected in Graph 5, below.

GRAPH 5
CORPORATE FIRM RATES COMPARED TO BOTH HOURLY RATES IN JUDICIALLY-APPROVED FEE APPLICATIONS IN MASSACHUSETTS CLASS ACTIONS AND TO COUNSEL'S HOURLY RATES



comparably skilled practitioners in cases other than cases under this title"). *Fourth*, the type of work – providing legal services to a group of absent creditors in a piece of complex litigation – is generally analogous to what class action attorneys do.

[37] My research assistants consulted Chambers and Partners rankings to create a list of leading corporate firms. They then searched for these firms by name on Westlaw, filtering for cases in Bankruptcy Courts in the District of Massachusetts after 2009. When one of the firms on the Chambers list was named as counsel for one of the parties in a Westlaw case, my research assistants searched PACER for a fee petition filed by that firm. Four cases yielded five usable fee petitions; a fifth case, the Houghton Mifflin Harcourt bankruptcy, was found by searching for large bankruptcies in Massachusetts. My research assistants utilized every petition they found meeting these criteria.

As is visually evident, judicially-approved defense firm rates are significantly higher than the rates in judicially-approved fee applications for class action attorneys in Massachusetts and similarly far higher than Counsel's rates herein. Indeed, when the differences between the trend lines are compared at all 141 points in Counsel's fee petition, the defense firm rates are, on average, 37.53% above the trend line for Counsel's rates.

Blended Rate

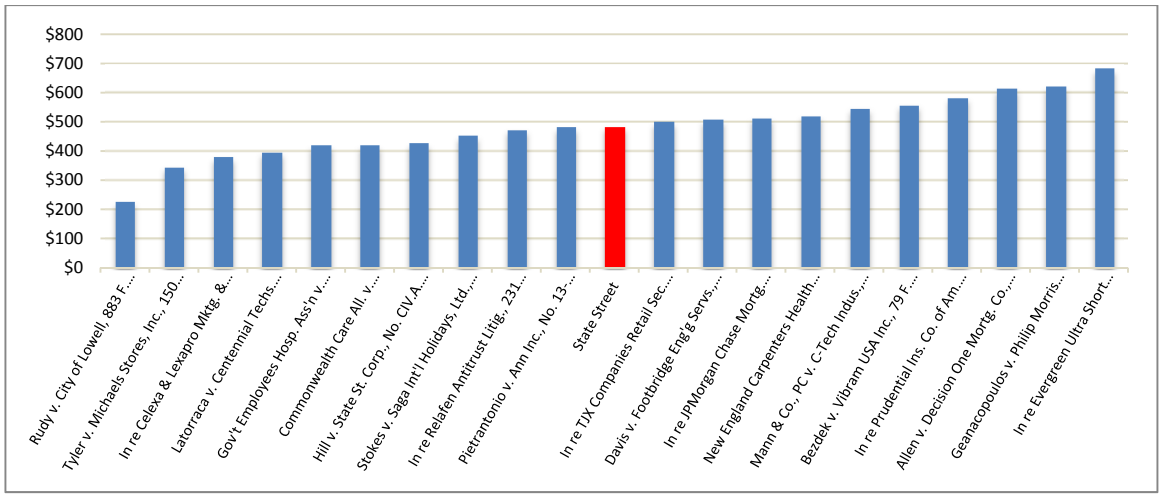
29. Counsel's blended billing rate[38] for the entire case – utilizing the corrected lodestars of the Labaton, Lieff Cabraser, and Thornton firms – is $484.70.[39] A quantitative analysis of this blended billing rate confirms its reasonableness.

30. To assess the reasonableness of the blended billing rate, I directed my research assistants to extract the blended billing rate from the 20 Massachusetts federal and state class action fee approvals that we had collected for this rate study. The blended billing rate (again adjusted to 2016 dollars) in these cases ranged from a low of $227.51/hour to a high of $683.24/hour. The mean rate for these 20 cases is $484.05. The complete range of blended billing rates is reflected in Graph 6, below, with the blended billing rate in this case highlighted in red. As the Court can see, the blended billing rate in this case ($484.70) is just at the median of the graph and 65 cents, or 0.13%, above the mean, demonstrating its normalcy.

[38] A blended billing rate is captured by simply dividing the total lodestar by the total number of hours worked, thus providing the average hourly billing rate for the case across all timekeepers ranging from high-end partners to paralegals.

[39] If the rates are adjusted for geographic markets, *see supra* ¶ 26, the blended rate for this case falls to $469.29.

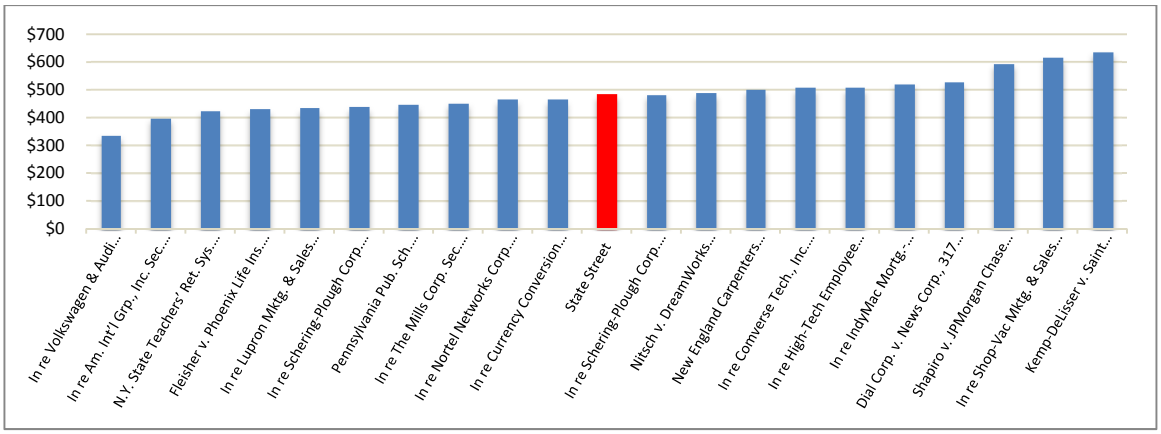
GRAPH 6
COUNSEL'S BLENDED BILLING RATES COMPARED TO BLENDED BILLING RATES IN RECENT MASSACHUSETTS CLASS ACTION FEE APPROVALS



31. Because the blended billing rates in the Massachusetts cases tend to have emerged from smaller settlements (this is one of the largest settlements in Massachusetts history), I also compared the blended billing rate in this $300 million settlement to blended billing rates in 20 other settlements of comparable size ($100-$500 million). A list of those cases is attached as Exhibit E.[40] The blended billing rate (again adjusted to 2016 dollars) in these cases ranged from a low of $338.07/hour to a high of $637.67/hour. The mean rate for these 20 cases is $484.67. The complete range of blended billing rates is reflected in Graph 7, below, with the blended billing rate in this case highlighted in red.

[40] My research assistants compiled this list by searching on Westlaw for fee decisions in cases with settlement funds of this size that contained information about counsel's lodestar. Thus, they used search terms like "megafund" or "hundred million" to capture fund size and search terms like "lodestar" or "hours" to capture decisions that contained rate information. If the case had a fund of the right size, but the reported decision did not contain enough information about the fee petition, they tracked that down on PACER. No cases of the relevant size enabling reference to counsel's lodestar information were rejected.

GRAPH 7
COUNSEL'S BLENDED BILLING RATES COMPARED TO BLENDED BILLING RATES IN $100-$500 MILLION CLASS ACTION SETTLEMENTS



As is visually evident, the blended billing rate in this case ($484.70) is in the middle of the pack – right at the median in the graph – and but three cents above the mean, demonstrating its normalcy.

32. The reasonableness of Counsel's blended billing rate supports several further conclusions. The blended billing rate reflects the distribution of time between partners, associates, and paralegals. If only partners did this work, the blended billing rate would be very high, whereas if only paralegals billed, the blended billing rate would be very low. The fact that the blended billing rate in this case is at or below average across two comparison sets means that Lead Counsel distributed work among partners, associates, non-partnership track attorneys, and paralegals in an appropriate fashion. Given the slightly above-average rates of the most senior attorneys in this case noted above, it is a sign of good leadership that Lead Counsel was able to bring the blended rate in at this mean.

33. In sum, three separate empirical analyses (one with two sub-parts) support the conclusion that Counsel's rates are entirely normal: they are consistent with the mean for rates approved by courts in awarding fees in class actions in this community; they are below the rates charged by the defendant's firm to its paying clients for similar work; and the blended rate is consistent with rates in this community and for comparably-sized settlements.

IV.
COUNSEL APPROPRIATELY BILLED NON-PARTNER TRACK ATTORNEYS AT MARKET RATES AND THE RATES EMPLOYED WERE REASONABLE

34. Counsel employed non-partnership track attorneys to undertake some aspects of the class's legal work, particularly the review of documents. I have reviewed the rates at which these non-partnership track attorneys are included in the lodestar for cross-check purposes and make three factual observations about those rates, two empirical, one policy-oriented.

35. *First,* these are skilled attorneys. They are referred to as "contract" or "staff" attorneys solely by virtue of the fact that they are not on a partnership track at the relevant law firms, but are hired on more of an ad hoc basis.[41] The fact that these lawyers are not on a partnership track, standing alone, says nothing about their qualifications or about the type of work that they undertook. For purposes of this report, I reviewed Lieff Cabraser's slide presentation to the Special Master, which, as the Court knows, reflects the backgrounds and experiences of many of the non-partnership track attorneys who worked on this case. It appeared clear to me that these attorneys were very well qualified: they typically graduated from good law schools; have significant experience, including at the tasks to which they are assigned; and often

[41] While different firms call these attorneys different names – e.g., "contract attorneys" or "staff attorneys" – the defining characteristic of them is that they are not on a partnership track. Commentators often make the incorrect assumption that these attorneys are necessarily "temps." Many are salaried employees of the firms and work at these firms over many years.

work on a non-partnership track as a personal choice about how they wish their careers to proceed, not because they are unqualified for partnership track jobs. Moreover, the firms have convincingly attested that these attorneys did meaningful work.

36. *Second*, the rates at which counsel included non-partnership track attorneys in their lodestar for cross-check purposes are consistent with 57 rates that courts have explicitly or implicitly affirmed in approving fee petitions in 12 class action cases decided since 2013.[42] A list of those cases is attached as Exhibit F. The rates in those cases ranged from $250.00 to $550.00, with a mean (in 2016 dollars) of $379.53.[43] The blended rate for non-partnership attorneys in this case was $379.31. Thus the rate in this case is 22 cents, or 0.06%, below the mean of the comparison group.[44] Put simply, the billing rate for non-partnership track attorneys in this case is entirely normal.

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[42] My research assistants compiled this list by searching for recent fee decisions involving staff or contract attorney rates, using a neutral search string in Westlaw. The search returned 29 cases. I read through all 29 cases. We then used the rates from any case with court-approved billing rates for contract or staff attorneys, accounting for experience, except for one case in which the contract attorneys simply staffed a calling center. This yielded 12 usable cases with 57 data points.

[43] Using a different data set, I recently reported a very similar numerical result in the Volkswagen "Clean Diesel" MDL. There, a set of 13 cases with 138 data points yielded an average contract attorney rate of $386.75 in 2017 dollars. *See* Declaration of William B. Rubenstein in Support of Plaintiffs' Motion for 3.0-Liter Attorneys' Fees and Costs at 21, *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case 3:15-md-02672-CRB (N.D. Cal.) (ECF No. 3396-2, Ex. B, filed June 30, 2017). Here, my 12 case data set's norm of $379.53 in 2016 dollars is the equivalent of $389.02 in 2017 dollars, which is virtually equivalent to the $386.75 I reported in VW (0.59% higher). Hence the two data sets reinforce one another.

[44] I removed Michael Bradley from this portion of my rate study since his hourly rate was set on a contingent basis, unlike the other non-partnership track attorneys. If he is included, the total for this case rises from $379.31 to $382.94, which is 0.90% above the mean of the comparison group.

37. *Third,*[45] the policy question of how to bill non-partnership track attorneys has arisen regularly in class suits as class counsel will often hire such lawyers to perform discrete functions in a particular case. Class counsel typically pay these attorneys at a lower hourly rate than the hourly rate they assign to them in the lodestar analysis in their fee petitions. To put numbers on this idea: the firms herein hired non-partnership track attorneys at rates ranging from $30 to $60/hour, then assigned these attorneys rates ranging from $335 to $440/hour[46] for purposes of the lodestar cross-check calculation based, for example, on the attorneys' number of years out of law school, their experience, and the type of work they performed. It is my expert opinion that several policy arguments support this approach:

- This is precisely the way in which firms bill legal services – including those of partners, associates, paralegals, and contract attorneys – to clients in the private market. For instance, a firm may pay a first-year associate a $150,000 annual salary and expect 2,000 hours of billable time in return. That means that the associate's salary breaks down to $75/hour. The associate likely costs the firm more than $75/hour because the firm has spent time recruiting and training the associate and because it pays for overhead, perhaps benefits, and other expenses associated with her work. Consequently, the associate who is receiving a $75/hour salary may actually cost the firm, say, $100/hour. But the firm then bills its clients, maybe, $375/hour for that associate's time, realizing a $275/hour, or 275%, profit for the associate's work. Regardless of the precise numbers that attach to the practice, the point is that law firms are in the business of making their partners a profit by having the partners bill the work done by their associates and paralegals to their clients at higher rates than they pay them. So long as a contract attorney is providing legal services to a client, a firm is entitled to bill her time to the client in the same manner.

- The ABA reached this conclusion nearly two decades ago, *see* ABA Formal Opinion 00-420, and I note as a matter of policy that courts have often cited to the ABA's guidance in concluding that class action firms "may charge a markup to cover overhead *and profit* if the contract attorney charges are billed as fees for legal services.[47] It makes sense that courts have so held because a contingent fee class action firm's lodestar operates in the same way as a private law firm's bill to its

[45] The language and citations in this and the following paragraphs are taken from 5 *Newberg on Class Actions*, supra note 4, at § 15:41.

[46] These ranges do not encompass Michael Bradley, as noted above. *See* note 44, *supra.*

[47] *In re AOL Time Warner S'holder Derivative Litig.,* No. 02 Civ. 6302(CM), 2010 WL 363113, at *26 (S.D.N.Y. Feb. 1, 2010) (emphasis added).

client: it embodies this basic profit for its partners and, in doing so, brings the lodestar in line with market rates.[48]

- Permitting class counsel to bill non-partnership track attorneys at market rates is cost-efficient: it encourages the firms to delegate work to attorneys who are likely billed at lower costs than are associates or partners. If class action firms could only bill non-partnership track attorneys at cost, they would likely transfer the work required to associates.

38. In sum, quantitative analysis of the rates paid non-partnership track attorneys shows that these rates are indistinguishable from the rates regularly approved by courts for such work and public policy strongly supports the manner in which Counsel billed non-partnership track attorneys.

V.
COUNSEL'S FEE WAS REASONABLE

39. Under the lodestar cross-check method, the measuring stick of the reasonableness of counsel's fee is the level of multiplier that it represents over the time they invested in the case. Counsel's fee embodied a lodestar multiplier of 2.01, or approximately 2.[49] Quantitatively, a 2

[48] The lodestar *multiplier* is meant to reward the class action firm over and above the market rate for undertaking a case on a contingency fee basis. Without such a multiplier, no firm would undertake contingent cases, as it would be far safer to simply reap the normal profit embodied in the lodestar but reflected, in a non-contingent case, in the bill to the client. *See, e.g.*, *Ketchum v. Moses* 17 P.3d 735, 742 (Cal. 2001) ("A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans. . . . A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases." (internal quotation marks and citations omitted)).

[49] This is the multiplier for the full fee award to all counsel in the case divided by the hours of all counsel in the case. As noted above, *see supra* ¶ 26, if all hourly rates are adjusted to Boston rates, the multiplier rises to 2.07.

multiplier is consistent with multipliers that courts have previously approved in similar circumstances.

40. Three leading empirical studies of class action attorney's fees found the mean multipliers in all cases to be 1.42,[50] 1.65, [51] and 1.81,[52] while an older study found the mean multiplier to be 4.97.[53]

41. These studies also show that multipliers are higher in cases with larger returns, with the mean multipliers rising to 2.39 (in cases with recoveries over $44.6 million) in one study;[54] to 3.18 (in cases with recoveries over $175.5 million) in another study;[55] and to 4.5 (in cases with recoveries over $100 million) in a third study.[56]

42. In the set of 20 $100-$500 million settlements my research assistants assembled for purposes of this Declaration, the approved multipliers ranged from 0.92 to 8.3, with the average being 2.28. The 2.01 multiplier in this case is therefore 12% below the mean for

[50] 5 *Newberg on Class Actions, supra* note 4, at § 15:89 (reporting on data from William B. Rubenstein and Rajat Krishna, *Class Action Fee Awards: A Comprehensive Empirical Study* (draft on file with author)).

[51] Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 833-34 (2010).

[52] Eisenberg & Miller II, *supra* note 5, at 272.

[53] Stuart J. Logan, Beverly C. Moore & Jack Moshman, *Attorney Fee Awards in Common Fund Class Actions*, 24 Class Action Rep. 167, 169 (2003) (hereafter "Logan").

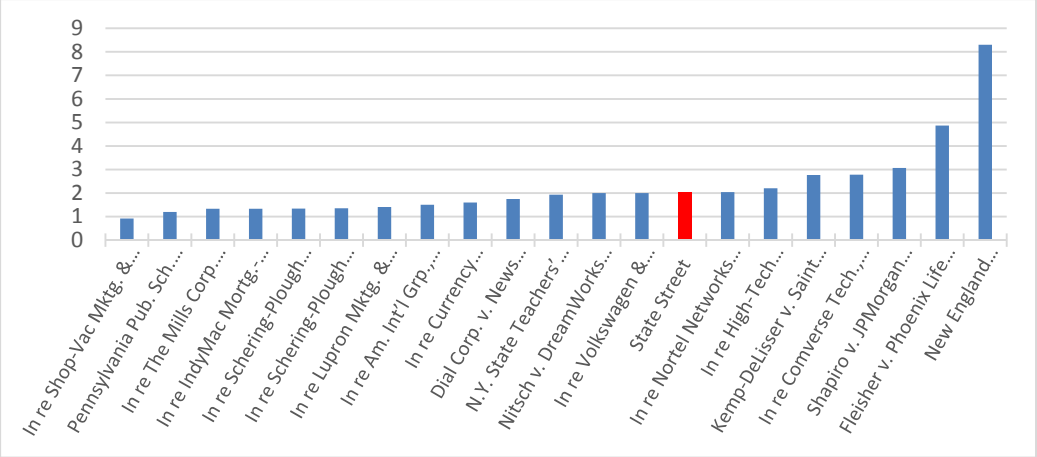
[54] 5 *Newberg on Class Actions, supra* note 4, at § 15:89 (reporting on data from William B. Rubenstein and Rajat Krishna, *Class Action Fee Awards: A Comprehensive Empirical Study* (draft on file with author)).

[55] Eisenberg & Miller II, *supra* note 5, at 274.

[56] Logan, *supra* note 53, at 167.

settlements of comparable size;[57] it appears a few cases higher than the median in Graph 8, below, but the only cases between this case and the median case have multiplier values of 2.0 rather than 2.01.

GRAPH 8
COURT-APPROVED MULTIPLIERS IN
$100-$500 MILLION-DOLLAR CASES



43. Beyond these bare statistics, case reports demonstrate that, in appropriate circumstances, courts have often approved percentage awards embodying lodestar multipliers far above the multiplier of 2 at issue here. In the leading Ninth Circuit opinion on point, for example, the Court established 25% as the benchmark percentage fee and approved a multiplier of 3.65, writing that this number "was within the range of multipliers applied in common fund cases"[58] and appending a list of such cases to its decision. Similarly, in Exhibit G, I provide a

[57] If Counsel's rates are adjusted to the Boston market and a 2.07 multiplier is employed, *see* ¶ 26, *supra,* that multiplier is 9.3% below the mean of the comparison set.

[58] *Vizcaino*, 290 F.3d at 1051; *see also Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) ("A 2.83 multiplier falls within the Ninth Circuit's presumptively acceptable range of 1.0–4.0. Given the complexity and duration of this litigation, the results obtained for the class, and the risk counsel faced in bringing the litigation, the Court finds the 2.83 multiplier appropriate." (citation omitted)).

list of 54 cases with multipliers over 3.5, 48 of which have multipliers of 4.00 or higher, and 31 of which have multipliers of 5.00 or higher. This list is not meant to be either exhaustive or representative of all multipliers. Rather, it demonstrates that courts approve percentage awards that embody multipliers well above the multiplier sought here in appropriate circumstances.

44. That such circumstances exist in this case is evident from this Court's conclusions at the fairness hearing:

> The amount awarded is about 1.8 times the lodestar. The lodestar is about $41 million. This is reasonable. In this case the plaintiffs' lawyers took on a contingent basis a novel, risky case. The result at the outset was uncertain, and it remained, until there was a settlement, uncertain. The plaintiffs' counsel were required to develop a novel case. This is not a situation where they piggybacked on the work of a public agency that had made certain findings. They were required to be pioneers to a certain extent. They were required to engage in substantial discovery that included production of nine million documents. They engaged in arduous arm's length negotiation that included 19 mediation sessions. They had to stand up on behalf of the class to experienced, able, energetic, formidable adversaries. They did that. And as I said, they generated a fair and reasonable return for the class, $300 million.[59]

The Court's finding regarding the risks that Counsel took and the results that they achieved are precisely the factors that support a multiplied fee award.[60] Nothing about the unfortunate miscalculation in Counsel's time-keeping displaces this conclusion, as the change in the proposed multiplier is simply from 1.8 to 2.

45. In sum, the requested multiplier is therefore above the mean for *all* cases but below the mean for *large* cases, it falls securely within the range of multipliers that courts have approved in appropriate circumstances in the past, and such circumstances existed in this case. As the purpose of the lodestar cross-check is to generate a multiplier enabling an assessment of

[59] Hearing Transcript, Nov. 2, 2016 (ECF No. 114) at 36.

[60] 5 *Newberg on Class Actions, supra* note 4, at § 15:87.

the reasonableness of the percentage award, a multiplier at this level fully supports the reasonableness of the fee the Court awarded Counsel in this matter.

* * *

46. I have testified that:

- Counsel's ***approach*** to its fee – presenting the Court with a requested percentage, providing information to enable a lodestar cross-check, and addressing a series of relevant factors – is the most common fee method and one normally used in large common fund cases like this one.

- Counsel's hourly ***billing rates*** are consistent with rates in class action cases in this community; lower than the rates charged by corporate firms in this market for similar work; and within pennies of the average blended hourly billing rates approved in other class action settlements in this community and in comparably-sized settlements.

- Counsel's approach to ***billing non-partnership track attorneys*** is consistent with prevailing law, policy, and ethical norms and the rates at which they bill these attorneys are fully consistent with the rates at which courts have approved contract and staff attorney work in other class action settlements.

- Counsel's ***multiplier*** of approximately 2 is below the mean for settlements of $100-$500 million and entirely reasonable given the unique risks that it shouldered and the superb results that it achieved for the class.

Executed this 31st day of July, 2017, in Los Angeles, California.

William B. Rubenstein

EXHIBIT A

PROFESSOR WILLIAM B. RUBENSTEIN

Harvard Law School - AR323
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Cambridge, MA 02138

(617) 496-7320
rubenstein@law.harvard.edu

ACADEMIC EMPLOYMENT

HARVARD LAW SCHOOL, CAMBRIDGE MA

Sidley Austin Professor of Law — 2011-present
Professor of Law — 2007-2011
Bruce Bromley Visiting Professor of Law — 2006-2007
Visiting Professor of Law — 2003-2004, 2005-2006
Lecturer in Law — 1990-1996

Courses: Civil Procedure; Class Action Law; Remedies
Awards: 2012 Albert M. Sacks-Paul A. Freund Award for Teaching Excellence
Membership: American Law Institute; American Bar Foundation Fellow

UCLA SCHOOL OF LAW, LOS ANGELES CA

Professor of Law — 2002-2007
Acting Professor of Law — 1997-2002

Courses: Civil Procedure; Complex Litigation; Remedies
Awards: 2002 Rutter Award for Excellence in Teaching
Top 20 California Lawyers Under 40, *Calif. Law Business* (2000)

STANFORD LAW SCHOOL, STANFORD CA

Acting Associate Professor of Law — 1995-1997

Courses: Civil Procedure; Federal Litigation
Awards: 1997 John Bingham Hurlbut Award for Excellence in Teaching

YALE LAW SCHOOL, NEW HAVEN CT

Lecturer in Law — 1994, 1995

BENJAMIN N. CARDOZO SCHOOL OF LAW, NEW YORK NY

Visiting Professor — Summer 2005

LITIGATION-RELATED EMPLOYMENT

AMERICAN CIVIL LIBERTIES UNION, NATIONAL OFFICE, NEW YORK NY

Project Director and Staff Counsel — 1987-1995

Litigated impact cases in federal and state courts throughout the US. Supervised a staff of attorneys at the national office, oversaw work of ACLU attorneys around the country, and coordinated work with private cooperating counsel nationwide. Significant experience in complex litigation practice and procedural issues; appellate litigation; litigation coordination, planning and oversight.

HON. STANLEY SPORKIN, U.S. DISTRICT COURT, WASHINGTON DC

Law Clerk — 1986-87

PUBLIC CITIZEN LITIGATION GROUP, WASHINGTON DC

Intern — Summer 1985

EDUCATION

HARVARD LAW SCHOOL, CAMBRIDGE MA
J.D., 1986, *magna cum laude*

YALE COLLEGE, NEW HAVEN CT
B.A., 1982, *magna cum laude*
Editor-in-Chief, YALE DAILY NEWS

SELECTED COMPLEX LITIGATION EXPERIENCE

Professional Service and Highlighted Activities

♢ *Author,* NEWBERG ON CLASS ACTIONS (sole author of Fourth Edition updates since 2008 and sole author of all content in the Fifth Edition)

♢ *Speaker,* Judicial Panel on Multidistrict Litigation, Multidistrict Litigation (MDL) Transferee Judges Conference, Palm Beach, Florida (invited to present to MDL judges on recent developments in class action law and related topics (2010, 2011, 2012, 2013, 2014 (invited), 2015, 2016, 2017)

♢ *Special counsel,* Appointed by the United States Court of Appeals for the Second Circuit to argue for affirmance of district court fee decision in complex securities class action, with result that the Court summarily affirmed the decision below (*In re Indymac Mortgage-Backed Securities Litigation*, 94 F.Supp.3d 517 (S.D.N.Y. 2015), *aff'd sub. nom*., *Berman DeValerio v. Olinsky*, No. 15-1310-cv, 2016 WL 7323980 (2d Cir. Dec. 16, 2017))

♢ *Author, Amicus* brief filed in the United States Supreme Court on behalf of civil procedure and complex litigation law professors concerning the importance of the class action lawsuit (*AT&T Mobility v. Concepcion,* No. 09-893, 131 S. Ct. 1740 (2011))

♢ *Amicus curiae, Amicus* brief filed in – and approvingly cited by – California Supreme Court on proper approach to attorney's fees in common fund cases (*Laffitte v. Robert Half Int'l Inc*., 376 P.3d 672, 687 (Cal. 2016))

♢ *Adviser,* American Law Institute, *Project on the Principles of the Law of Aggregate Litigation*, Philadelphia, Pennsylvania

♢ *Advisory Board, Class Action Law Monitor* (Strafford Publications), 2008-

♢ *Co-Chair,* ABA Litigation Section, Mass Torts Committee, Class Action Sub-Committee, 2007

♢ *Planning Committee,* American Bar Association, Annual National Institute on Class Actions Conference, 2006, 2007

♢ "*Expert's Corner*" (Monthly Column)*, Class Action Attorney Fee Digest,* 2007-2011

Expert Witness

♢ Retained as an expert witness and submitted report explaining meaning of the denial of a motion to dismiss in American procedure to foreign tribunals (*In re Qualcomm Antitrust Matter,* declaration submitted to tribunals in Korea and Taiwan (2017))

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in 3.0-liter settlement, referenced by court in awarding fees (*In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation,* 2017 WL 3175924 (N.D. Cal. July 21, 2017))

♢ Retained as an expert witness concerning impracticability of joinder in antitrust class action (*In re Celebrex (Celecoxib) Antitrust Litigation,* Civ. Action No. 2-14-cv-00361 (E.D. Va. (2017))

♢ Submitted an expert witness declaration and deposed concerning impracticability of joinder in antitrust class action (*In re Modafinil Antitrust Litigation,* Civ. Action No. 2-06-cv-01797 (E.D. Pa. (2017))

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in 2.0-liter settlement (*In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation,* 2017 WL 1047834 (N.D. Cal., March 17, 2017))

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request, referenced by court in awarding fees (*Aranda v. Caribbean Cruise Line, Inc.,* 2017 WL 1368741 (N.D. Ill., April 10, 2017))

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*McKinney v. United States Postal Service*, Civil Action No. 1:11-cv-00631 (D.D.C. (2016))

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Johnson v. Caremark RX, LLC,* Case No. 01-CV-2003-6630, Alabama Circuit Court, Jefferson County (2016))

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in sealed fee mediation (2016)

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Geancopoulos v. Philip Morris USA Inc.,* Civil Action No. 98-6002-BLS1 (Mass. Superior Court, Suffolk County))

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in sealed fee mediation (2016)

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Gates v. United Healthcare Insurance Company,* Case No. 11 Civ. 3487 (S.D.N.Y. 2015))

♢ Retained as an expert trial witness on class action procedures and deposed prior to trial in matter

that settled before trial (*Johnson v. Caremark RX, LLC,* Case No. 01-CV-2003-6630, Alabama Circuit Court, Jefferson County (2016))

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request, referenced by court in awarding fees (*In re High-Tech Employee Antitrust Litig*., 2015 WL 5158730 (N.D. Cal. Sept. 2, 2015))

♢ Retained as an expert witness concerning adequacy of putative class representatives in securities class action (*Medoff v. CVS Caremark Corp.,* Case No. 1:09-cv-00554 (D.R.I. (2015))

♢ Submitted an expert witness declaration concerning reasonableness of proposed class action settlement, settlement class certification, attorney's fees, and incentive awards (*Fitzgerald Farms, LLC v. Chespeake Operating, L.L.C.,* Case No. CJ-2010-38, Dist. Ct., Beaver County, Oklahoma (2015))

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request, referenced by court in awarding fees (*Asghari v. Volkswagen Grp. of Am., Inc*., 2015 WL 12732462 (C.D. Cal. May 29, 2015))

♢ Submitted an expert witness declaration concerning propriety of severing individual cases from class action and resulting statute of repose ramifications (*In re: American International Group, Inc. 2008 Securities Litigation,* 08-CV-4772-LTS-DCF (S.D.N.Y. (2015))

♢ Retained by Fortune Global 100 Corporation as an expert witness on fee matter that settled before testimony (2015)

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*In re: Hyundai and Kia Fuel Economy Litigation,* MDL 13-02424 (C.D. Cal. (2014))

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Ammari Electronics v. Pacific Bell Directory*, Case No. RG0522096, California Superior Court, Alameda County (2014))

♢ Submitted an expert witness declaration and deposed concerning plaintiff class action practices under the Private Securities Litigation Reform Act of 1995 (PSLRA), as related to statute of limitations question (*Federal Home Loan Bank of San Francisco v. Deutsche Bank Securities, Inc.,* Case No. CGC-10-497839, California Superior Court, San Francisco County (2014))

♢ Submitted an expert witness declaration and deposed concerning plaintiff class action practices under the Private Securities Litigation Reform Act of 1995 (PSLRA), as related to statute of limitations question (*Federal Home Loan Bank of San Francisco v. Credit Suisse Securities (USA) LLC,* Case No. CGC-10-497840, California Superior Court, San Francisco County (2014))

♢ Retained as expert witness on proper level of common benefit fee in MDL (*In re Neurontin Marketing and Sales Practice Litigation,* Civil Action No. 04-10981, MDL 1629 (D. Mass. (2014))

♢ Submitted an expert witness declaration concerning Rule 23(g) selection of competing counsel,

referenced by court in deciding issue (*White v. Experian Information Solutions, Inc.,* 993 F. Supp. 2d 1154 (C.D. Cal. (2014))

♢ Submitted an expert witness declaration concerning proper approach to attorney's fees under California law in a statutory fee-shifting case (*Perrin v. Nabors Well Services Co.,* Case No. 1220037974, Judicial Arbitration and Mediation Services (JAMS) (2013))

♢ Submitted an expert witness declaration concerning fairness and adequacy of proposed nationwide class action settlement (*Verdejo v. Vanguard Piping Systems,* Case No. BC448383, California Superior Court, Los Angeles County (2013))

♢ Retained as an expert witness regarding fairness, adequacy, and reasonableness of proposed nationwide consumer class action settlement (*Herke v. Merck,* No. 2:09-cv-07218, MDL Docket No. 1657 (*In re Vioxx Products Liability Litigation*) (E. D. La. (2013))

♢ Retained as an expert witness concerning ascertainability requirement for class certification and related issues (*Henderson v. Acxiom Risk Mitigation, Inc.,* Case No. 3:12-cv-00589-REP (E.D. Va. (2013))

♢ Submitted an expert witness declaration concerning reasonableness of class action settlement and performing analysis of "net expected value" of settlement benefits, relied on by court in approving settlement (*In re Navistar Diesel Engine Products Liab. Litig.*, 2013 WL 10545508 (N.D. Ill. July 3, 2013))

♢ Submitted an expert witness declaration concerning reasonableness of class action settlement and attorney's fee request (*Commonwealth Care All. v. Astrazeneca Pharm. L.P.*, 2013 WL 6268236 (Mass. Super. Aug. 5, 2013))

♢ Submitted an expert witness declaration concerning propriety of preliminary settlement approval in nationwide consumer class action settlement (*Anaya v. Quicktrim, LLC,* Case No. CIVVS 120177, California Superior Court, San Bernardino County (2012))

♢ Submitted expert witness affidavit concerning fee issues in common fund class action (*Tuttle v. New Hampshire Med. Malpractice Joint Underwriting Assoc.,* Case No. 217-2010-CV-00294, New Hampshire Superior Court, Merrimack County (2012))

♢ Submitted expert witness declaration and deposed concerning class certification issues in nationwide fraud class action, relied upon by the court in affirming class certification order (*CVS Caremark Corp. v. Lauriello,* 175 So. 3d 596, 609-10 (Ala. 2014))

♢ Submitted expert witness declaration in securities class action concerning value of proxy disclosures achieved through settlement and appropriate level for fee award (*Rational Strategies Fund v. Jhung,* Case No. BC 460783, California Superior Court, Los Angeles County (2012))

♢ Submitted an expert witness report and deposed concerning legal malpractice in the defense of a class action lawsuit (*KB Home v. K&L Gates, LLP,* Case No. BC484090, California Superior Court, Los Angeles County (2011))

◊ Retained as expert witness on choice of law issues implicated by proposed nationwide class certification (*Simon v. Metropolitan Property and Cas. Co.,* Case No. CIV-2008-1008-W (W.D. Ok. (2011))

◊ Retained, deposed, and testified in court as expert witness in fee-related dispute (*Blue, et al. v. Hill*,Case No. 3:10-CV-02269-O-BK (N.D. Tex. (2011))

◊ Retained as an expert witness in fee-related dispute (*Furth v. Furth*, Case No. C11-00071-DMR (N.D. Cal. (2011))

◊ Submitted expert witness declaration concerning interim fee application in complex environmental class action (*DeLeo v. Bouchard Transportation,* Civil Action No. PLCV2004-01166-B, Massachusetts Superior Court (2010))

◊ Retained as an expert witness on common benefit fee issues in MDL proceeding in federal court (*In re Vioxx Products Liability Litigation*, MDL Docket No. 1657 (E.D. La. (2010))

◊ Submitted expert witness declaration concerning fee application in securities case, referenced by court in awarding fee (*In re AMICAS, Inc. Shareholder Litigation,* 27 Mass. L. Rptr. 568 (Mass. Sup. Ct. (2010))

◊ Submitted an expert witness declaration concerning fee entitlement and enhancement in non-common fund class action settlement, relied upon by the court in awarding fees (*Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172-74 (C.D. Cal. 2010))

◊ Submitted an expert witness declaration concerning class action fee allocation among attorneys (*Salvas v. Wal-Mart*, Civil Action No. 01-03645, Massachusetts Superior Court (2010))

◊ Submitted an expert witness declaration concerning settlement approval and fee application in wage and hour class action settlement (*Salvas v. Wal-Mart*, Civil Action No. 01-03645, Massachusetts Superior Court (2010))

◊ Submitted an expert witness declaration concerning objectors' entitlement to attorney's fees (*Rodriguez v. West Publishing Corp.,* Case No. CV-05-3222 (C.D. Cal. (2010))

◊ Submitted an expert witness declaration concerning fairness of settlement provisions and processes, relied upon by the Ninth Circuit in reversing district court's approval of class action settlement (*Radcliffe v. Experian Inform. Solutions Inc.*, 715 F.3d 1157, 1166 (9th Cir. 2013))

◊ Submitted an expert witness declaration concerning attorney's fees in class action fee dispute, relied upon by the court in deciding fee issue (*Ellis v. Toshiba America Information Systems, Inc.*, 218 Cal. App. 4th 853, 871, 160 Cal. Rptr. 3d 557, 573 (2d Dist. 2013))

◊ Submitted an expert witness declaration concerning common benefit fee in MDL proceeding in federal court (*In re Genetically Modified Rice Litigation*, MDL Docket No. 1811 (E.D. Mo. (2009))

♢ Submitted an expert witness declaration concerning settlement approval and fee application in national MDL class action proceeding (*In re Wal-Mart Wage and Hour Employment Practices Litigation*, MDL Docket No.1735 (D. Nev. (2009))

♢ Submitted an expert witness declaration concerning fee application in national MDL class action proceeding, referenced by court in awarding fees (*In re Dept. of Veterans Affairs (VA) Data Theft Litigation*, 653 F. Supp.2d 58 (D.D.C. (2009))

♢ Submitted an expert witness declaration concerning common benefit fee in mass tort MDL proceeding in federal court (*In re Kugel Mesh Products Liability Litigation*, MDL Docket No. 1842 (D. R.I. (2009))

♢ Submitted an expert witness declaration and supplemental declaration concerning common benefit fee in consolidated mass tort proceedings in state court (*In re All Kugel Mesh Individual Cases*, Master Docket No. PC-2008-9999, Superior Court, State of Rhode Island (2009))

♢ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Warner v. Experian Information Solutions, Inc.*, Case No. BC362599, California Superior Court, Los Angeles County (2009))

♢ Submitted an expert witness declaration concerning process for selecting lead counsel in complex MDL antitrust class action (*In re Rail Freight Fuel Surcharge Antitrust Litigation*, MDL Docket No. 1869 (D. D.C. (2008))

♢ Retained, deposed, and testified in court as expert witness on procedural issues in complex class action (*Hoffman v. American Express*, Case No. 2001-022881, California Superior Court, Alameda County (2008))

♢ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Salsgiver v. Yahoo! Inc.*, Case No. BC367430, California Superior Court, Los Angeles County (2008))

♢ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Voight v. Cisco Systems, Inc.*, Case No. 106CV075705, California Superior Court, Santa Clara County (2008))

♢ Retained and deposed as expert witness on fee issues in attorney fee dispute (*Stock v. Hafif,* Case No. KC034700, California Superior Court, Los Angeles County (2008))

♢ Submitted an expert witness declaration concerning fee application in consumer class action (*Nicholas v. Progressive Direct*, Civil Action No. 06-141-DLB (E.D. Ky. (2008))

♢ Submitted expert witness declaration concerning procedural aspects of national class action arbitration (*Johnson v. Gruma Corp.,* JAMS Arbitration No. 1220026252 (2007))

♢ Submitted expert witness declaration concerning fee application in securities case (*Drulias v. ADE Corp.,* Civil Action No. 06-11033 PBS (D. Mass. (2007))

♢ Submitted expert witness declaration concerning use of expert witness on complex litigation matters in criminal trial (*U.S. v. Gallion, et al*., No. 07-39 (E. D. Ky. (2007))

♢ Retained as expert witness on fees matters (*Heger v. Attorneys' Title Guaranty Fund, Inc.,* No. 03-L-398, Illinois Circuit Court, Lake County, IL (2007))

♢ Retained as expert witness on certification in statewide insurance class action (*Wagner v. Travelers Property Casualty of America*, No. 06CV338, Colorado District Court, Boulder County, CO (2007))

♢ Testified as expert witness concerning fee application in common fund shareholder derivative case (*In Re Tenet Health Care Corporate Derivative Litigation*, Case No. 01098905, California Superior Court, Santa Barbara Cty, CA (2006))

♢ Submitted expert witness declaration concerning fee application in common fund shareholder derivative case (*In Re Tenet Health Care Corp. Corporate Derivative Litigation*, Case No. CV-03-11 RSWL (C.D. Cal. (2006))

♢ Retained as expert witness as to certification of class action (*Canova v. Imperial Irrigation District*, Case No. L-01273, California Superior Court, Imperial Cty, CA (2005))

♢ Retained as expert witness as to certification of nationwide class action (*Enriquez v. Edward D. Jones & Co.,* Missouri Circuit Court, St. Louis, MO (2005))

♢ Submitted expert witness declaration on procedural aspects of international contract litigation filed in court in Korea (*Estate of Wakefield v. Bishop Han & Jooan Methodist Church* (2002))

♢ Submitted expert witness declaration as to contested factual matters in case involving access to a public forum (*Cimarron Alliance Foundation v. The City of Oklahoma City,* Case No. Civ. 2001-1827-C (W.D. Ok. (2002))

♢ Submitted expert witness declaration concerning reasonableness of class certification, settlement, and fees (*Baird v. Thomson Elec. Co.*, Case No. 00-L-000761, Cir. Ct., Mad. Cty, IL (2001))

Expert Consultant

♢ Provided expert consulting services to the ACLU on multi-district litigation issues arising out of various challenges to President Trump's travel ban and related policies (*In re American Civil Liberties Union Freedom of Information Act Requests Regarding Executive Order 13769*, Case Pending No. 28, Judicial Panel on Multidistrict Litigation (2017); *Darweesh v. Trump*, Case No. 1:17-cv-00480-CBA-LB (E.D.N.Y. (2017))

♢ Provided expert consulting services to law firm regarding billing practices and fee allocation issues in nationwide class action (2016)

◊ Provided expert consulting services to law firm regarding fee allocation issues in nationwide class action (2016)

◊ Provided expert consulting services to the ACLU of Southern California on class action and procedural issues arising out of challenges to municipality's treatment of homeless persons with disabilities (*Glover v. City of Laguna Beach*, Case No. 8:15-cv-01332-AG-DFM (C.D. Cal. (2016))

◊ Retained as an expert consultant on class certification issues (*In re: Facebook, Inc., IPO Securities and Derivative Litigation*, No. 1:12-md-2389 (S.D.N.Y. 2015))

◊ Provided expert consulting services to lead class counsel on class certification issues in nationwide class action (2015)

◊ Retained by a Fortune 100 Company as an expert consultant on class certification issues

◊ Retained as an expert consultant on class action and procedure related issues (*Lange et al v. WPX Energy Rocky Mountain LLC*, Case No. #: 2:13-cv-00074-ABJ (D. Wy. (2013))

◊ Retained as an expert consultant on class action and procedure related issues (*Flo & Eddie, Inc., v. Sirius XM Radio, Inc.*, Case No. CV 13-5693 (C.D. Cal. (2013))

◊ Served as an expert consultant on substantive and procedural issues in challenge to legality of credit card late and over-time fees (*In Re Late Fee and Over-Limit Fee Litigation*, 528 F.Supp.2d 953 (N.D. Cal. 2007), *aff'd*, 741 F.3d 1022 (9th Cir. 2014))

◊ Retained as an expert on Class Action Fairness Act (CAFA) removal issues and successfully briefed and argued remand motion based on local controversy exception (*Trevino, et al. v. Cummins, et al.*,No. 2:13-cv-00192-JAK-MRW (C. D. Cal. (2013))

◊ Retained as an expert consultant on class action related issues by consortium of business groups (*In re Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico on April 20, 2010*, MDL No. 2179 (E.D. La. (2012))

◊ Provided presentation on class certification issues in nationwide medical monitoring classes (*In re: National Football League Players' Concussion Injury Litigation,* MDL No. 2323, Case No. 2:12-md-02323-AB (E.D. Pa. (2012))

◊ Retained as an expert consultant on class action related issues in mutli-state MDL consumer class action (*In re Sony Corp. SXRD Rear Projection Television Marketing, Sales Practices & Prod. Liability Litig.*, MDL No. 2102 (S.D. N.Y. (2009))

◊ Retained as an expert consultant on class action certification, manageability, and related issues in mutli-state MDL consumer class action (*In re Teflon Prod. Liability Litig.*, MDL No. 1733 (S.D. Iowa (2008))

◊ Retained as an expert consultant/co-counsel on certification, manageability, and related issues in nationwide anti-trust class action (*Brantley v. NBC Universal*, No.- CV07-06101 (C.D. Cal.

(2008))

♢ Retained as an expert consultant on class action issues in complex multi-jurisdictional construction dispute (*Antenucci, et al., v. Washington Assoc. Residential Partner, LLP, et al.,* Civil No. 8-04194 (E.D. Pa. (2008))

♢ Retained as an expert consultant on complex litigation issues in multi-jurisdictional class action litigation (*McGreevey v. Montana Power Company*, No. 08-35137, U.S. Court of Appeals for the Ninth Circuit (2008))

♢ Retained as an expert consultant on class action and attorney fee issues in nationwide consumer class action (*Figueroa v. Sharper Image*, 517 F.Supp.2d 1292 (S.D. Fla. 2007))

♢ Retained as an expert consultant on attorney's fees issue in complex class action case (*Natural Gas Anti-Trust Cases Coordinated Proceedings*, D049206, California Court of Appeals, Fourth District (2007))

♢ Retained as an expert consultant on remedies and procedural matters in complex class action (*Sunscreen Cases*, JCCP No. 4352, California Superior Court, Los Angeles County (2006))

♢ Retained as an expert consultant on complex preclusion questions in petition for review to California Supreme Court (*Mooney v. Caspari,* Supreme Court of California (2006))

♢ Retained as an expert consultant on attorney fee issues in complex common fund case (*In Re DietDrugs (Phen/Fen) Products Liability Litigation* (E. D. Pa. (2006))

♢ Retained as an expert consultant on procedural matters in series of complex construction lien cases (*In re Venetian Lien Litigation*, Supreme Court of the State of Nevada (2005-2006))

♢ Served as an expert consultant on class certification issues in countywide class action (*Beauchamp v. Los Angeles Cty. Metropolitan Transp. Authority*, (C.D. Cal. 2004))

♢ Served as an expert consultant on class certification issues in state-wide class action (*Williams v. State of California*, Case No. 312-236, Cal. Superior Court, San Francisco)

♢ Served as an exert consultant on procedural aspects of complex welfare litigation (*Allen v. Anderson*, 199 F.3d 1331 (9th Cir. 1999))

Ethics Opinions

♢ Retained to provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2017))

♢ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2013))

♢ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re*

Professional Responsibility Inquiries (2011))

♢ Provided expert opinion on issues of professional ethics in implicated by nationwide class action practice (*In re Professional Responsibility Inquiries* (2010))

♢ Provided expert opinion on issues of professional ethics implicated by complex litigation matter (*In re Professional Responsibility Inquiries* (2010))

♢ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2007))

Publications on Class Actions & Procedure

♢ NEWBERG ON CLASS ACTIONS (sole author of supplements to 4th edition since 2008 and of 5th edition (2011-2017))

♢ *Profit for Costs*, 63 DEPAUL L. REV. 587 (2014) (with Morris A. Ratner)

♢ *Procedure and Society: An Essay for Steve Yeazell,* 61 U.C.L.A. REV. DISC. 136 (2013)

♢ *Supreme Court Round-Up – Part II*, 5 CLASS ACTION ATTORNEY FEE DIGEST 331 (September 2011)

♢ *Supreme Court Round-Up – Part I*, 5 CLASS ACTION ATTORNEY FEE DIGEST 263 (July-August 2011)

♢ *Class Action Fee Award* Procedures, 5 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2011)

♢ *Benefits of Class Action Lawsuits*, 4 CLASS ACTION ATTORNEY FEE DIGEST 423 (November 2010)

♢ *Contingent Fees for Representing the Government: Developments in California Law*, 4 CLASS ACTION ATTORNEY FEE DIGEST 335 (September 2010)

♢ *Supreme Court Roundup*, 4 CLASS ACTION ATTORNEY FEE DIGEST 251 (July 2010)

♢ *SCOTUS Okays Performance Enhancements in Federal Fee Shifting Cases – At Least In Principle,* 4 CLASS ACTION ATTORNEY FEE DIGEST 135 (April 2010)

♢ *The Puzzling Persistence of the "Mega-Fund" Concept*, 4 CLASS ACTION ATTORNEY FEE DIGEST 39 (February 2010)

♢ *2009: Class Action Fee Awards Go Out With A Bang, Not A Whimper*, 3 CLASS ACTION ATTORNEY FEE DIGEST 483 (December 2009)

♢ *Privatizing Government Litigation: Do Campaign Contributors Have An Inside Track?*, 3 CLASS ACTION ATTORNEY FEE DIGEST 407 (October 2009)

◊ *Supreme Court Preview*, 3 CLASS ACTION ATTORNEY FEE DIGEST 307 (August 2009)

◊ *Supreme Court Roundup*, 3 CLASS ACTION ATTORNEY FEE DIGEST 259 (July 2009)

◊ *What We Now Know About How Lead Plaintiffs Select Lead Counsel (And Hence Who Gets Attorney's Fees!) in Securities Cases*, 3 CLASS ACTION ATTORNEY FEE DIGEST 219 (June 2009)

◊ *Beware Of Ex Ante Incentive Award Agreements*, 3 CLASS ACTION ATTORNEY FEE DIGEST 175 (May 2009)

◊ *On What a "Common Benefit Fee" Is, Is Not, and Should Be*, 3 CLASS ACTION ATTORNEY FEE DIGEST 87 (March 2009)

◊ *2009: Emerging Issues in Class Action Fee Awards*, 3 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2009)

◊ *2008: The Year in Class Action Fee Awards*, 2 CLASS ACTION ATTORNEY FEE DIGEST 465 (December 2008)

◊ *The Largest Fee Award – Ever!*, 2 CLASS ACTION ATTORNEY FEE DIGEST 337 (September 2008)

◊ *Why Are Fee Reductions Always 50%?: On The Imprecision of Sanctions for Imprecise Fee Submissions*, 2 CLASS ACTION ATTORNEY FEE DIGEST 295 (August 2008)

◊ *Supreme Court Round-Up,* 2 CLASS ACTION ATTORNEY FEE DIGEST 257 (July 2008)

◊ *Fee-Shifting For Wrongful Removals: A Developing Trend?,* 2 CLASS ACTION ATTORNEY FEE DIGEST 177 (May 2008)

◊ *You Cut, I Choose: (Two Recent Decisions About) Allocating Fees Among Class Counsel,* 2 CLASS ACTION ATTORNEY FEE DIGEST 137 (April 2008)

◊ *Why The Percentage Method?,* 2 CLASS ACTION ATTORNEY FEE DIGEST 93 (March 2008)

◊ *Reasonable Rates: Time To Reload The (*Laffey*) Matrix,* 2 CLASS ACTION ATTORNEY FEE DIGEST 47 (February 2008)

◊ *The "Lodestar Percentage:" A New Concept For Fee Decisions?,* 2 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2008)

◊ *Class Action Practice Today: An Overview, in* ABA SECTION OF LITIGATION, CLASS ACTIONS TODAY 4 (2008)

◊ *Shedding Light on Outcomes in Class Actions*, *in* CONFIDENTIALITY, TRANSPARENCY, AND THE U.S. CIVIL JUSTICE SYSTEM 20-59 (Joseph W. Doherty, Robert T. Reville, and Laura Zakaras eds. 2008) (with Nicholas M. Pace)

◊ *Finality in Class Action Litigation: Lessons From Habeas,* 82 N.Y.U. L. REV. 791 (2007)

◊ *The American Law Institute's New Approach to Class Action Objectors' Attorney's Fees,* 1 CLASS ACTION ATTORNEY FEE DIGEST 347 (November 2007)

◊ *The American Law Institute's New Approach to Class Action Attorney's Fees,* 1 CLASS ACTION ATTORNEY FEE DIGEST 307 (October 2007)

◊ *"The Lawyers Got More Than The Class Did!": Is It Necessarily Problematic When Attorneys Fees Exceed Class Compensation?,* 1 CLASS ACTION ATTORNEY FEE DIGEST 233 (August 2007)

◊ *Supreme Court Round-Up,* 1 CLASS ACTION ATTORNEY FEE DIGEST 201 (July 2007)

◊ *On The Difference Between Winning and Getting Fees,* 1 CLASS ACTION ATTORNEY FEE DIGEST 163 (June 2007)

◊ *Divvying Up The Pot: Who Divides Aggregate Fee Awards, How, and How Publicly?,* 1 CLASS ACTION ATTORNEY FEE DIGEST 127 (May 2007)

◊ *On Plaintiff Incentive Payments,* 1 CLASS ACTION ATTORNEY FEE DIGEST 95 (April 2007)

◊ *Percentage of What?,* 1 CLASS ACTION ATTORNEY FEE DIGEST 63 (March 2007)

◊ *Lodestar v. Percentage: The Partial Success Wrinkle,* 1 CLASS ACTION ATTORNEY FEE DIGEST 31 (February 2007)(with Alan Hirsch)

◊ *The Fairness Hearing: Adversarial and Regulatory Approaches*, 53 U.C.L.A. L. REV. 1435 (2006) (excerpted in THE LAW OF CLASS ACTIONS AND OTHER AGGREGATE LITIGATION 447-449 (Richard A. Nagareda ed., 2009))

◊ *Why Enable Litigation? A Positive Externalities Theory of the Small Claims Class Action*, 74 U.M.K.C. L. REV. 709 (2006)

◊ *On What a "Private Attorney General" Is – And Why It Matters*, 57 VAND. L. REV. 2129(2004) (excerpted in COMPLEX LITIGATION 63-72 (Kevin R. Johnson, Catherine A. Rogers & John Valery White eds., 2009)).

◊ *The Concept of Equality in Civil Procedure*, 23 CARDOZO L. REV. 1865 (2002) (selected for the Stanford/Yale Junior Faculty Forum, June 2001)

◊ *A Transactional Model of Adjudication*, 89 GEORGETOWN L.J. 371 (2000)

◊ *The Myth of Superiority*, 16 CONSTITUTIONAL COMMENTARY 599 (1999)

◊ *Divided We Litigate: Addressing Disputes Among Clients and Lawyers in Civil Rights Campaigns*, 106 YALE L. J. 1623 (1997) *(*excerpted in COMPLEX LITIGATION 120-123 (1998))

Selected Presentations

♢ *Class Action Update,* MDL Transferee Judges Conference, Palm Beach, Florida, November 1, 2017

♢ *Class Action Update,* MDL Transferee Judges Conference, Palm Beach, Florida, November 2, 2016

♢ *Judicial Power and its Limits in Multidistrict Litigation,* American Law Institute, Young Scholars Medal Conference, *The Future of Aggregate Litigation*, New York University School of Law, New York, New York, April 12, 2016

♢ *Class Action Update & Attorneys' Fees Issues Checklist,* MDL Transferee Judges Conference, Palm Beach, Florida, October 28, 2015

♢ *Class Action Law,* 2015 Ninth Circuit/Federal Judicial Center Mid-Winter Workshop, Tucson, Arizona, January 26, 2015

♢ *Recent Developments in Class Action Law,* MDL Transferee Judges Conference, Palm Beach, Florida, October 29, 2014

♢ *Recent Developments in Class Action Law,* MDL Transferee Judges Conference, Palm Beach, Florida, October 29, 2013

♢ *Class Action Remedies,* ABA 2013 National Institute on Class Actions, Boston, Massachusetts, October 23, 2013

♢ *The Public Life of the Private Law: The Logic and Experience of Mass Litigation – Conference in Honor of Richard Nagareda,* Vanderbilt Law School, Nashville, Tennessee, September 27-28, 2013

♢ *Brave New World: The Changing Face of Litigation and Law Firm Finance*, Clifford Symposium 2013, DePaul University College of Law, Chicago, Illinois, April 18-19, 2013

♢ *Twenty-First Century Litigation: Pathologies and Possibilities: A Symposium in Honor of Stephen Yeazell,* UCLA Law Review, UCLA School of Law, Los Angeles, California, January 24-25, 2013

♢ *Litigation's Mirror: The Procedural Consequences of Social Relationships,* Sidley Austin Professor of Law Chair Talk, Harvard Law School, Cambridge, Massachusetts, October 17, 2012

♢ *Alternative Litigation Funding (ALF) in the Class Action Context – Some Initial Thoughts*, Alternative Litigation Funding: A Roundtable Discussion Among Experts, George Washington University Law School, Washington, D.C., May 2, 2012

♢ *The Operation of Preclusion in Multidistrict Litigation (MDL) Cases*, Brooklyn Law School Faculty Workshop, Brooklyn, New York, April 2, 2012

◊ *The Operation of Preclusion in Multidistrict Litigation (MDL) Cases*, Loyola Law School Faculty Workshop, Los Angeles, California, February 2, 2012

◊ *Recent Developments in Class Action Law and Impact on MDL Cases,* MDL Transferee Judges Conference, Palm Beach, Florida, November 2, 2011

◊ *Recent Developments in Class Action Law,* MDL Transferee Judges Conference, Palm Beach, Florida, October 26, 2010

◊ *A General Theory of the Class Suit*, University of Houston Law Center Colloquium, Houston, Texas, February 3, 2010

◊ *Unpacking The "Rigorous Analysis" Standard,* ALI-ABA 12th Annual National Institute on Class Actions, New York, New York, November 7, 2008

◊ *The Public Role in Private Law Enforcement: Visions from CAFA*, University of California (Boalt Hall) School of Law Civil Justice Workshop, Berkeley, California, February 28, 2008

◊ *The Public Role in Private Law Enforcement: Visions from CAFA*, University of Pennsylvania Law Review Symposium, Philadelphia, Pennsylvania, Dec. 1, 2007

◊ *Current CAFA Consequences: Has Class Action Practice Changed?,* ALI-ABA 11th Annual National Institute on Class Actions, Chicago, Illinois, October 17, 2007

◊ *Using Law Professors as Expert Witnesses in Class Action Lawsuits,* ALI-ABA 10th Annual National
Institute on Class Actions, San Diego, California, October 6, 2006

◊ *Three Models for Transnational Class Actions*, Globalization of Class Action Panel, International Law Association 2006 Conference, Toronto, Canada, June 6, 2006

◊ *Why Create Litigation?: A Positive Externalities Theory of the Small Claims Class Action*, UMKC Law Review Symposium, Kansas City, Missouri, April 7, 2006

◊ *Marks, Bonds, and Labels: Three New Proposals for Private Oversight of Class Action Settlements*, UCLA Law Review Symposium, Los Angeles, California, January 26, 2006

◊ Class Action Fairness Act, Arnold & Porter, Los Angeles, California, December 6, 2005

◊ ALI-ABA 9th Annual National Institute on Class Actions, Chicago, Illinois, September 23, 2005

◊ Class Action Fairness Act, UCLA Alumni Assoc., Los Angeles, California, September 9, 2005

◊ Class Action Fairness Act, Thelen Reid & Priest, Los Angeles, California, May 12, 2005

◊ Class Action Fairness Act, Sidley Austin, Los Angeles, California, May 10, 2005

♢ Class Action Fairness Act, Munger, Tolles & Olson, Los Angeles, California, April 28, 2005

♢ Class Action Fairness Act, Akin Gump Strauss Hauer Feld, Century City, CA, April 20, 2005

SELECTED OTHER LITIGATION EXPERIENCE

United States Supreme Court

♢ Co-counsel on petition for writ of *certiorari* concerning application of the voluntary cessation doctrine to government defendants (*Rosebrock v. Hoffman*, 135 S. Ct.1893 (2015))

♢ Authored *amicus* brief filed on behalf of civil procedure and complex litigation law professors concerning the importance of the class action lawsuit (*AT&T Mobility v. Concepcion,* No. 09-893, 131 S. Ct. 1740 (2011))

♢ Co-counsel in constitutional challenge to display of Christian cross on federal land in California's Mojave preserve (*Salazar v. Buono*, 130 S. Ct. 1803 (2010))

♢ Co-authored *amicus* brief filed on behalf of constitutional law professors arguing against constitutionality of Texas criminal law (*Lawrence v. Texas*, 539 U.S. 558 (2003))

♢ Co-authored *amicus* brief on scope of *Miranda* (*Illinois v. Perkins*, 496 U.S. 292 (1990))

Attorney's Fees

♢ Appointed by the United States Court of Appeals for the Second Circuit to argue for affirmance of district court fee decision in complex securities class action, with result that the Court summarily affirmed the decision below (*In re Indymac Mortgage-Backed Securities Litigation*, 94 F.Supp.3d 517 (S.D.N.Y. 2015), *aff'd sub. nom*., *Berman DeValerio v. Olinsky*, No. 15-1310-cv, 2016 WL 7323980 (2d Cir. Dec. 16, 2017))

♢ Served as *amicus curiae* and co-authored *amicus* brief on proper approach to attorney's fees in common fund cases, relied on by the court in *Laffitte v. Robert Half Int'l Inc*., 1 Cal. 5th 480, 504, 376 P.3d 672, 687 (2016).

Consumer Class Action

♢ Co-counsel in challenge to antenna-related design defect in Apple's iPhone4 (*Dydyk v. Apple Inc.,* 5:10-cv-02897-HRL, U.S. Dist. Court, N.D. Cal.) (complaint filed June 30, 2010)

♢ Co-class counsel in $8.5 million nationwide class action settlement challenging privacy concerns raised by Google's Buzz social networking program (*In re Google Buzz Privacy Litigation,* 5:10-cv-00672-JW, U.S. Dist. Court, N.D. Cal.) (amended final judgment June 2, 2011)

Disability

♢ Co-counsel in successful ADA challenge ($500,000 jury verdict) to the denial of health care in emergency room (*Howe v. Hull*, 874 F. Supp. 779, 873 F. Supp 72 (N.D. Ohio 1994))

Employment

♢ Co-counsel in challenges to scope of family benefit programs (*Ross v. Denver Dept. of Health*, 883 P.2d 516 (Colo. App. 1994)); *(Phillips v. Wisc. Personnel Com'n*, 482 N.W.2d 121 (Wisc. 1992))

Equal Protection

♢ Co-counsel in (state court phases of) successful challenge to constitutionality of a Colorado ballot initiative, Amendment 2 (*Evans v. Romer*, 882 P.2d 1335 (Colo. 1994))

♢ Co-counsel (and *amici*) in challenges to rules barring military service by gay people (*Able v. United States*, 44 F.3d 128 (2d Cir. 1995); *Steffan v. Perry*, 41 F.3d 677 (D.C. Cir. 1994) (en banc))

♢ Co-counsel in challenge to the constitutionality of the Attorney General of Georgia's firing of staff attorney (*Shahar v. Bowers*, 120 F.3d 211 (11th Cir. 1997))

Fair Housing

♢ Co-counsel in successful Fair Housing Act case on behalf of group home (*Hogar Agua y Vida En el Desierto v. Suarez-Medina*, 36 F.3d 177 (1st Cir. 1994))

Family Law

♢ Co-counsel in challenge to constitutionality of Florida law limiting adoption (*Cox v. Florida Dept. of Health and Rehab. Srvcs.*, 656 So.2d 902 (Fla. 1995))

♢ Co-authored *amicus* brief in successful challenge to Hawaii ban on same-sex marriages (*Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993))

First Amendment

♢ Co-counsel in successful challenge to constitutionality of Alabama law barring state funding foruniversity student groups (*GLBA v. Sessions*, 930 F.Supp. 1492 (M.D. Ala. 1996))

♢ Co-counsel in successful challenge to content restrictions on grants for AIDS education materials (*Gay Men's Health Crisis v. Sullivan*, 792 F.Supp. 278 (S.D.N.Y. 1992))

Landlord / Tenant

♢ Lead counsel in successful challenge to rent control regulation (*Braschi v. Stahl Associates Co.*, 544 N.E.2d 49 (N.Y. 1989))

Police

♢ Co-counsel in case challenging DEA brutality (*Anderson v. Branen*, 27 F.3d 29 (2nd Cir. 1994))

Racial Equality

♢ Co-authored *amicus* brief for constitutional law professors challenging constitutionality of Proposition 209 *(Coalition for Economic Equity v. Wilson*, 110 F.3d 1431 (9th Cir. 1997))

SELECTED OTHER PUBLICATIONS

Editorials

♢ *Follow the Leaders*, NEW YORK TIMES, March 15, 2005
♢ *Play It Straight*, NEW YORK TIMES, October 16, 2004
♢ *Hiding Behind the Constitution*, NEW YORK TIMES, March 20, 2004
♢ *Toward More Perfect Unions,* NEW YORK TIMES, November 20, 2003 (with Brad Sears)
♢ *Don't Ask, Don't Tell. Don't Believe It*, NEW YORK TIMES, July 20, 1993
♢ *AIDS: Illness and Injustice*, WASH. POST, July 26, 1992 (with Nan D. Hunter)

BAR ADMISSIONS

♢ Massachusetts (2008)
♢ California (2004)
♢ District of Columbia (1987) (inactive)
♢ Pennsylvania (1986) (inactive)

♢ U.S. Supreme Court (1993)

♢ U.S. Court of Appeals for the First Circuit (2010)
♢ U.S. Court of Appeals for the Second Circuit (2015)
♢ U.S. Court of Appeals for the Fifth Circuit (1989)
♢ U.S. Court of Appeals for the Ninth Circuit (2004)
♢ U.S. Court of Appeals for the Eleventh Circuit (1993)
♢ U.S. Court of Appeals for the D.C. Circuit (1993)

♢ U.S. District Courts for the Central District of California (2004)
♢ U.S. District Court for the District of the District of Columbia (1989)
♢ U.S. District Court for the District of Massachusetts (2010)
♢ U.S. District Court for the Northern District of California (2010)

EXHIBIT B

Arkansas Teacher Retirement System et al.
v.
State Street Bank and Trust Co.
C.A. No. 11-10230-MLW; 11-12049-MLW; 12-11698-MLW
Expert Declaration of William B. Rubenstein

EXHIBIT B
Partial List of Documents Reviewed by Professor Rubenstein
(other than case law and scholarship on the relevant issues)

1. Class Action Complaint, ECF No. 1
2. Amended Class Action Complaint, ECF No. 10
3. Memorandum of Law in Support of Plaintiff's Assented-to Motion for Appointment of Interim Lead Counsel and Liaison Counsel for the Proposed Class, ECF No. 8
4. Memorandum in Support of Defendant's Motion to Dismiss, ECF No. 19
5. Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss, ECF No. 22
6. Reply Memorandum in Support of Defendant's Motion to Dismiss, ECF No. 29
7. Order Granting in Part and Denying in Part Defendant's Motion to Dismiss, ECF No. 33
8. Stipulation and Joint Motion to Continue Stay, ECF No. 66
9. Stipulation and Joint Motion to Continue Stay, ECF No. 71
10. Stipulation and Joint Motion to Continue Stay, ECF No. 75
11. Stipulation and Agreement of Settlement, ECF No. 89
12. Memorandum of Law in Support of Plaintiffs' Assented-to Motion for Preliminary Approval of Proposed Class Settlement, Preliminary Certification of Settlement Class, and Approval of Proposed Form and Manner of Class Notice, ECF No. 91
13. Declaration of Lawrence A. Sucharow in Support of Plaintiffs' Assented-to Motion for Preliminary Approval of Proposed Class Settlement, Preliminary Certification of Settlement Class, and Approval of Proposed Form and Manner of Class Notice, ECF No. 92
14. Exhibit A: Letter Dated March 18, 2011, ECF No. 92-1
15. Exhibit B: Labaton Sucharow Firm Resume, ECF No. 92-2
16. Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, ECF No. 97
17. Defendants' Memorandum in Support of Class Action Settlement, ECF No. 99
18. Plaintiffs' Assented-to Motion for Final Approval of Proposed Class Settlement and Plan of Allocation and Final Certification of Settlement Class, ECF No. 100
19. Lead Counsel's Motion for an Award of Attorneys' Fees, Payment of Litigation Expenses of Service Awards to Plaintiffs, ECF No. 102
20. [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
21. Declaration of Lawrence A. Sucharow in Support of (A) Plaintiffs' Assented-to Motion for Final Approval of Proposed Class Settlement and Plan of Allocation and Final Certification of Settlement Class and (B) Lead Counsel's Motion for an Award of

Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs, ECF No. 104

22. Exhibit 1: Declaration of George Hopkins in Support of Final Approval of Class Settlement, Award of Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Award to ARTRS, ECF No. 104-1
23. Exhibit 2: Letter Dates March 18, 2011, ECF No. 104-2
24. Exhibit 3: Motion to Dismiss, ECF No. 104-3
25. Exhibit 4: Lobby Conference Before Chief Judge Mark L. Wolf, ECF No. 104-4
26. Exhibit 5: Declaration of Jonathan B. Marks, ECF No. 104-5
27. Exhibit 15: 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
28. Exhibit 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, ECF No. 104-16
29. Exhibit 17: 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, ECF No. 104-17
30. Exhibit 18: Declaration of Lynn Sarko on Behalf of The Andover Companies Employee Savings and Profit Sharing Plan and James Pehoushek-Strangeland in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses, ECF No. 104-18
31. Exhibit 19: Declaration of J. Brian McTigue in Support of Motion for Attorneys' fees, Reimbursement of Expenses, and Incentive Awards to Certain Class Representatives, ECF No. 104-19
32. Exhibit 20: Declaration of Carl S. Kravitz in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses, ECF No. 104-20
33. Exhibit 21: Declaration of Catherine M. Campbell on Behalf of Feinberg, Campbell & Zack, PC in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses, ECF No. 104-21
34. Exhibit 22: Declaration of Jonathan G. Axelrod on Behalf of Beins, Axelrod, PC in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses, ECF No. 104-22
35. Exhibit 23: Declaration of Kimberly Keevers Palmer on Behalf of Richardson, Patrick, Westbrook & Brickman, LLC in Support of Lead Counsel's Motion for an Award of Attorneys' fees and Payment of Expenses, ECF No. 104-23
36. Exhibit 24: Master Chart of Lodestars, Litigation Expenses, and Plaintiffs' Service Awards, ECF No. 104-24
37. Exhibit 25: Rate Tables, ECF No. 104-25
38. Defendant's Statement of Reporting Status of Class Action Settlement, ECF No. 106
39. Reply Memorandum of Law in Further Support of (A) Plaintiffs' Assented-to Motion for Final Approval of Proposed Class Settlement and Plan of Allocation and Final Certification of Settlement Class and (B) Lead Counsel's Motion for an Award of Attorneys' fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs, ECF No. 108

40. Supplemental Declaration of Eric J. Miller on Behalf of A.B. Data, Ltd. Regarding Mailing of Notice to Settlement Class Members and Requests for Exclusion, ECF No. 109
41. Order and Final Judgment, ECF No. 110
42. Order Awarding Attorneys' fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs, ECF No. 111
43. Order Approving Plan of Allocation, ECF No. 112
44. Hearing Transcript, ECF No. 114
45. Letter Dated November 10, 2016, ECF No. 116
46. Memorandum and Order, ECF No. 117
47. The Competitive Enterprise Institute's Center for Class Action Fairness's Memorandum in Support of Motion for Leave to File *Amicus Curiae* Response to Court's Order of February 6 and for Leave to Participate as *Guardian ad Litem* for Class or *Amicus* in Front of Special Master, ECF No. 127
48. Memorandum of Lieff Cabraser Heimann & Bernstein, LLP Consenting to Appointment of Special Master, ECF No. 128
49. Memorandum of Labaton Sucharow LLP Consenting to Appointment of Special Master and Proposing Appointment of Co-Special Master, ECF No. 129
50. Order Regarding Class Notice, ECF No. 172
51. Memorandum and Order Regarding Appointment of Judge Rosen as Special Master, ECF No. 173
52. The Competitive Enterprise Institute's Center for Class Action Fairness's *Amicus* Response to Court's Order of February 6 – Leave to File granted March 8, 2017 (Dkt. 172), ECF No. 174
53. Memorandum and Order Regarding Class Notice, ECF No. 187
54. Memorandum and Order Regarding Motion for Relief from Fee Order, ECF No. 192
55. Special Master's Order Regarding the Law Firms' Objection to Retention of John W. Toothman as Advisor to Counsel to the Special Master, ECF No. 193
56. Objection of Labaton Sucharow LLP, Lieff Cabraser Heimann & Bernstein, LLP, and Thornton Law Firm LLP to Proposed Appointment of John W. Toothman as Expert in Proceeding Before the Special Master, ECF No. 194
57. Objection Plaintiffs' Law Firms' Objection to Special Master's Order Regarding Retention of John W. Toothman, ECF No. 199
58. Memorandum and Order Regarding Emergency Motion, ECF No. 200
59. Exhibit A: Notice of Proceedings that Could Result in an Additional Award to Class Members Who Have Claims, ECF No. 200-1
60. Exhibit B: Notice of Proceedings that Could Result in an Additional award to Class Members Who Have Claims, ECF No. 200-2
61. Declaration of Eric J. Miller on Behalf of A.B. Data, Ltd. Regarding Mailing and Emailing of Supplemental Notice to Settlement Class Members and/or Their Counsel, ECF No. 202
62. Order Regarding Email Addresses, ECF No. 203
63. Memorandum and Order – Toothman Order, ECF No. 204
64. Labaton Sucharow's Response to the Court's April 26, 2017 Order, ECF No. 205
65. Exhibit A: Declaration of Nicole M. Zeiss in Response to the Court's April 26, 2017 Order, ECF No. 205-1

66. Exhibit B: Declaration of Eric J. Miller on Behalf of A.B. Data, Ltd. in Response to the Court's April 26, 2017 Order, ECF No. 205-2
67. Memorandum and Order Regarding Special Master Billing Rate, ECF No. 206
68. Labaton Sucharow LLP's Response to Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories to Labaton Sucharow LLP – June 1 Response
69. Lieff Cabraser Heimann & Bernstein LLP's Responses to Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories Due on June 1, 2017
70. Thornton Law Firm, LLP's June 1, 2017 Responses to Special master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories
71. 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
72. 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
73. Thornton Law Firm, LLP's June 9, 2017 Responses to Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories
74. Lieff Cabraser Heimann & Bernstein LLP's Corrected Responses to Special Master Honorable Gerald E. Rosen's (Ret.) Interrogatories Nos. 43 and 44
75. Labaton Sucharow LLP's Response to Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories to Labaton Sucharow LLP – July 10 Response
76. Lieff Cabraser Heimann & Bernstein LLP's Responses to Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories Due on July 10, 2017
77. Thronton Law Firm, LLP's July 10, 2017 Responses to Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories

EXHIBIT C

Arkansas Teacher Retirement System et al.
v.
State Street Bank and Trust Co.
C.A. No. 11-10230-MLW; 11-12049-MLW; 12-11698-MLW
Expert Declaration of William B. Rubenstein

EXHIBIT C
Massachusetts Cases Affirming Class Action Fee Awards

1. *Allen v. Decision One Mortg. Co., LLC*, No. CIV.A. 07-11669-GAO, 2010 WL 1930148 (D. Mass. May 12, 2010)
2. *Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324 (D. Mass.), aff'd, 809 F.3d 78 (1st Cir. 2015)
3. *Commonwealth Care All. v. Astrazeneca Pharm. L.P.*, No. CIV.A. 05-0269 BLS 2, 2013 WL 6268236 (Mass. Super. Aug. 5, 2013)
4. *Davis v. Footbridge Eng'g Servs., LLC*, No. 09CV11133-NG, 2011 WL 3678928 (D. Mass. Aug. 22, 2011)
5. *Geanacopoulos v. Philip Morris USA Inc.*, No. 98-6002-BLS1, 2016 WL 757536 (Mass. Super. Feb. 24, 2016)
6. *Gov't Employees Hosp. Ass'n v. Serono Int'l, S.A.*, 246 F.R.D. 93 (D. Mass. 2007)
7. *Hill v. State St. Corp.*, No. CIV.A. 09-12146-GAO, 2015 WL 127728 (D. Mass. Jan. 8, 2015), appeal dismissed, 794 F.3d 227 (1st Cir. 2015)
8. *In re Celexa & Lexapro Mktg. & Sales Practices Litig.*, No. MDL 09-2067-NMG, 2014 WL 4446464 (D. Mass. Sept. 8, 2014)
9. *In re Evergreen Ultra Short Opportunities Fund Sec. Litig.*, No. CIV.A. 08-11064-NMG, 2012 WL 6184269 (D. Mass. Dec. 10, 2012)
10. *In re JPMorgan Chase Mortg. Modification Litig.*, 18 F. Supp. 3d 62 (D. Mass. 2014)
11. *In re Prudential Ins. Co. of Am. SGLI/VGLI Contract Litig.*, No. 3:10-CV-30163-MAP, 2014 WL 6968424 (D. Mass. Dec. 9, 2014)
12. *In re Relafen Antitrust Litig.*, 231 F.R.D. 52 (D. Mass. 2005)
13. *In re TJX Companies Retail Sec. Breach Litig.*, 584 F. Supp. 2d 395 (D. Mass. 2008)
14. *Latorraca v. Centennial Techs. Inc.*, 834 F. Supp. 2d 25 (D. Mass. 2011)
15. *Mann & Co., PC v. C-Tech Indus., Inc.*, No. CIV.A.08-11312-RGS, 2010 WL 457572 (D. Mass. Feb. 5, 2010)
16. *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, No. CIV.A. 05-11148PBS, 2009 WL 2408560 (D. Mass. Aug. 3, 2009)
17. *Pietrantonio v. Ann Inc.*, No. 13-CV-12721-RGS, 2014 WL 3973995 (D. Mass. Aug. 14, 2014)
18. *Rudy v. City of Lowell*, 883 F. Supp. 2d 324 (D. Mass. 2012)
19. *Stokes v. Saga Int'l Holidays, Ltd.*, 376 F. Supp. 2d 86 (D. Mass. 2005)
20. *Tyler v. Michaels Stores, Inc.*, 150 F. Supp. 3d 53 (D. Mass. 2015)

EXHIBIT D

Arkansas Teacher Retirement System et al.
v.
State Street Bank and Trust Co.
C.A. No. 11-10230-MLW; 11-12049-MLW; 12-11698-MLW
Expert Declaration of William B. Rubenstein

EXHIBIT D

Massachusetts Bankruptcy Cases Containing Corporate Firm Billing Rates

1. *In re Houghton Mifflin Harcourt Publishing Company*, 12-BK-15610 (Bankr. D. Mass. 2012), ECF. No. 168
2. *In re Lexington Jewelers Exch., Inc.*, No. 08-10042-WCH, 2013 WL 2338243 (Bankr. D. Mass. May 29, 2013), ECF No. 439-1
3. *In re McCabe Grp.*, 424 B.R. 1 (Bankr. D. Mass.), *aff'd in part, rev'd in part sub nom. McCabe v. Braunstein*, 439 B.R. 1 (D. Mass. 2010), ECF No. 404-8
4. *In re Oscient Pharm. Corp.*, No. 09-16576-HJB, 2010 WL 6602493 (Bankr. D. Mass. June 29, 2010); ECF No. 485
5. *In re Oscient Pharm. Corp.*, No. 09-16576-HJB, 2010 WL 6602493 (Bankr. D. Mass. June 29, 2010); ECF No. 487-6
6. *In re The Educ. Res. Inst., Inc.*, 442 B.R. 20 (Bankr. D. Mass. 2010), ECF No. 1196-1

EXHIBIT E

Arkansas Teacher Retirement System et al.
v.
State Street Bank and Trust Co.
C.A. No. 11-10230-MLW; 11-12049-MLW; 12-11698-MLW
Expert Declaration of William B. Rubenstein

EXHIBIT E
Class Actions Settlements with Funds of $100-$500 Million

1. *Dial Corp. v. News Corp.*, 317 F.R.D. 426 (S.D.N.Y. 2016)
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
3. *In re Am. Int'l Grp., Inc. Sec. Litig.*, 293 F.R.D. 459 (S.D.N.Y. 2013), ECF No. 634-23
4. *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (NGG), 2010 WL 2653354 (E.D.N.Y. June 24, 2010)
5. *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110 (S.D.N.Y. 2009)
6. *In re High-Tech Employee Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 WL 5158730 (N.D. Cal. Sept. 2, 2015)
7. *In re IndyMac Mortg.-Backed Sec. Litig.*, 94 F. Supp. 3d 517 (S.D.N.Y. 2015)
8. *In re Lupron Mktg. & Sales Practices Litig.*, No. 01-CV-10861-RGS, 2005 WL 2006833 (D. Mass. Aug. 17, 2005)
9. *In re Nortel Networks Corp.*, No. 01-CV-1855(RMB), 2002 WL 1492116 (S.D.N.Y. Feb. 4, 2002), ECF No. 194
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]
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]
12. *In re Shop-Vac Mktg. & Sales Practices Litig.*, No. 2380, 2016 WL 7178421 (M.D. Pa. Dec. 9, 2016)
13. *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246 (E.D. Va. 2009)
14. *In re Volkswagen & Audi Warranty Extension Litig.*, 89 F. Supp. 3d 155 (D. Mass. 2015)
15. *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, No. 15-CV-1113 (VAB), 2016 WL 6542707 (D. Conn. Nov. 3, 2016)
16. *N.Y. State Teachers' Ret. Sys. v. Gen. Motors Co.*, 315 F.R.D. 226 (E.D. Mich. 2016)
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
18. *Nitsch v. DreamWorks Animation SKG Inc.*, No. 14-CV-04062-LHK, 2017 WL 2423161 (N.D. Cal. June 5, 2017)
19. *Pennsylvania Pub. Sch. Employees' Ret. Sys. v. Bank of Am. Corp.*, 318 F.R.D. 19, 23 (S.D.N.Y. 2016)
20. *Shapiro v. JPMorgan Chase & Co.*, No. 11 CIV. 7961 CM, 2014 WL 1224666 (S.D.N.Y. Mar. 24, 2014)

EXHIBIT F

Arkansas Teacher Retirement System et al.
v.
State Street Bank and Trust Co.
C.A. No. 11-10230-MLW; 11-12049-MLW; 12-11698-MLW
Expert Declaration of William B. Rubenstein

EXHIBIT F
Reported Class Action Fee Decisions
Containing Billing Rates for Contract or Staff Attorneys

1. *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877 (C.D. Cal. 2016), *judgment entered*, No. SACV111733FMOMLGX, 2016 WL 5921765 (C.D. Cal. Oct. 11, 2016), ECF No. 218-8
2. *City of Providence v. Aeropostale, Inc.*, No. 11 CIV. 7132 CM GWG, 2014 WL 1883494 (S.D.N.Y. May 9, 2014), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015), ECF No. 61-4
3. *In re Am. Apparel, Inc. S'holder Litig..*, No. CV1006352MMMJCGX, 2014 WL 10212865 (C.D. Cal. July 28, 2014), ECF No. 188-3
4. *In re Animation Workers Antitrust Litig.*, No. 14-CV-4062-LHK, 2016 WL 6663005 (N.D. Cal. Nov. 11, 2016), ECF Nos. 331-2, 331-3, 331-4
5. *In re High-Tech Employee Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 WL 5158730 (N.D. Cal. Sept. 2, 2015), ECF No. 1083-20
6. *In re Optical Disk Drive Prod. Antitrust Litig.*, No. 3:10-MD-2143 RS, 2016 WL 7364803 (N.D. Cal. Dec. 19, 2016), ECF No. 1963-1
7. *Long v. HSBC USA INC.*, No. 14 CIV. 6233 (HBP), 2016 WL 4764939 (S.D.N.Y. Sept. 13, 2016)
8. *McGreevy v. Life Alert Emergency Response, Inc.*, No. 14 CIV. 7457 (LGS), 2017 WL 1534452 (S.D.N.Y. Apr. 28, 2017)
9. *Mills v. Capital One, N.A.*, No. 14 CIV. 1937 HBP, 2015 WL 5730008 (S.D.N.Y. Sept. 30, 2015), ECF No. 52
10. *Phillips v. Triad Guar. Inc.*, No. 1:09CV71, 2016 WL 2636289 (M.D.N.C. May 9, 2016), ECF No. 145-1
11. *Rose v. Bank of Am. Corp.*, No. 5:11-CV-02390-EJD, 2014 WL 4273358 (N.D. Cal. Aug. 29, 2014)
12. *St. Louis Police Ret. Sys. v. Severson*, No. 12-CV-5086 YGR, 2014 WL 3945655 (N.D. Cal. Aug. 11, 2014)

EXHIBIT G

Arkansas Teacher Retirement System et al.
v.
State Street Bank and Trust Co.
C.A. No. 11-10230-MLW; 11-12049-MLW; 12-11698-MLW
Expert Declaration of William B. Rubenstein

EXHIBIT G
List of Exemplary Cases With Multipliers Over 3.5

1. In re Merry-Go-Round Enterprises, Inc., 244 B.R. 327 (Bankr. D. Md. 2000) (19.6 multiplier)

2. Stop & Shop Supermarket Co. v. SmithKline Beecham Corp., NO. CIV.A. 03-457, 2005 WL 1213926, at *17-18 (E.D. Pa. May 19, 2005) (15.6 multiplier)

3. Kuhnlein v. Department of Revenue, 662 So.2d 309, 315 (Fla. 1995) (15 multiplier reduced to 5)

4. In re Doral Fin. Corp. Sec. Litig., No. 05-md-1706 (S. D. N.Y. July 17, 2007) (10.26 multiplier)

5. Weiss v. Mercedes-Benz, 899 F. Supp. 1297 (D. N.J. 1995), aff'd, 66 F.3d 314 (3d Cir. 1995) (9.3 multiplier)

6. Doty v. Costco Wholesale Corp., No. 05-3241 (C. D. Cal. May 14, 2007) (9 multiplier)

7. Conley v. Sears, Roebuck & Co., 222 B.R. 181 (D. Mass. 1998) (8.9 multiplier)

8. Cosgrove v. Sullivan, 759 F. Supp. 1667, 167 n.1 (S. D. N.Y. 1991) (8.74 multiplier)

9. New England Carpenters Health Benefits Fund v. First Databank, Inc., Civil Action No. 05-11148-PBS, 2009 WL 2408560 (D. Mass. Aug. 3, 2009) (8.3 multiplier)

10. Newman v. Caribiner Int'l, Inc., No. 99 Civ. 2271 (S.D. N.Y. Oct. 19, 2001) (7.7 multiplier)

11. Hainey v. Parrott, No. 02-733 (S. D. Ohio Nov. 6, 2007) (7.47 effective multiplier)

12. In re Rite Aid Corp. Sec. Litigation, 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (6.96 multiplier)

13. Steiner v. Amer. Broadcasting Co., Inc., 248 Fed. Appx. 780, 783 (9th Cir. 2007) (6.85 multiplier)

14. In re UnitedHealth Group, Inc. PSLRA Litig., No. 06-1691 (D. Minn. Aug. 10, 2009) (6.49 multiplier)

15. The Music Force, LLC v. Viacom, Inc., No. 04-8239 (C.D. Cal. Aug. 8, 2007) (6.43 multiplier)

16. In re Boston and Maine Corp. v. Sheehan, Phinney, Bass & Green, P.A., 778 F.2d 890 (1st Cir. 1985) (6 multiplier)

17. In re Cardinal Health Inc. Securities Litigations, 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007) (6 multiplier)

18. In re Krispy Kreme Doughnuts, Inc. Sec. Litig., No. 04-416 (M.D. N.C. Feb. 15, 2007) (6 multiplier)

19. In re RJR Nabisco, Inc. Securities Litigation, No. 88 Civ. 7905(MBM), 1992 WL 210138, at *5-6 (S.D. N.Y. Aug. 14, 1992) (6 multiplier)

20. Spartanburg Reg'l Health Servs. Dist., Inc. v. Hillenbrand Indus., Inc., No. 03-2141 (D. S.C. Aug. 15, 2006) (6 multiplier)

21. In re Cardinal Health, Inc. Sec. Litig., No. 04-575, 2007 U.S. Dist. LEXIS 95127 (S. D. Ohio Dec. 31, 2007) (5.85 multiplier)

22. Dutton v. D&K Healthcare Res., Inc., No. 04-147 (E. D. Mo. June 5, 2007) (5.6 multiplier)

23. In re Charter Communications, Inc., Securities Litigation, No. MDL 1506, 2005 WL 4045741, at * 22 (E.D. Mo. June 30, 2005) (5.6 multiplier)

24. Roberts v. Texaco, Inc., 979 F. Supp. 185, 198 (S.D. N.Y. 1997) (5.5 multiplier)

25. Warner v. Experian Info. Solutions, Inc., No. BC362599 (Cal. Super. Ct. Los Angeles Co. Feb. 26, 2009) (5.48 multiplier)

26. Davis v. J.P. Morgan Chase & Co., 827 F. Supp. 2d 172, 185 (W.D.N.Y. 2011) (5.3 multiplier)

27. Di Giacomo v. Plains All American Pipeline, No. Civ.A.H-99-4137, 2001 WL 34633373, * at 11-12 (S.D. Tex. Dec. 19, 2001) (5.3 multiplier)

28. Craft v. County of San Bernardino, 624 F. Supp. 2d 1113, 1123-25 (C.D. Cal. 2008) (5.2 multiplier)

29. In re Enron Corp. Securities, Derivative & ERISA Litigation, 586 F. Supp. 2d 732, 803 (S.D. Tex. 2008) (5.2 multiplier)

30. In re Beverly Hills Fire Litig., 639 F. Supp. 915, 924 (E. D. Ky. 1986) (5 multiplier to attorney who performed the bulk of work on the case)

31. In re Fernald Litigation, No. C-1-85-149, 1989 WL 267038, at *4-5 (S.D. Ohio Sept. 29, 1989) (5 multiplier)

32. In re Cendant Corp. Securities Litigation, 404 F.3d 173, 183 (3d Cir. 2005) (multiplier in "mid-single digits")

33. In re United Rentals, Inc. Sec. Litig., No. 04-1615 (D. Conn. May 26, 2009) (4.79 multiplier)

34. Castillo v. General Motors Corp., No. 07-2142 (E. D. Cal. April 19, 2009) (4.77 multiplier)

35. Meijer, Inc. v. 3M, No. 04-5871, 2006 WL 2382718 (E. D. Pa. Aug. 14, 2006) (4.77 multiplier)

36. In re Xcel Energy, Inc., Securities, Derivative & "ERISA" Litigation, 364 F. Supp. 2d 980, 999 (D. Minn. 2005) (4.7 multiplier)

37. Maley v. Del Global Technologies Corp., 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002) (4.65 multiplier)

38. Teeter v. NCR Corp., No. 08-297 (C.D. Cal. Aug. 6, 2009) (4.61 multiplier)

39. Holleran v. Rita Medical Sys., Inc., No. RG06302394 (Cal. Super. Ct. Alameda Co. Aug. 1, 2007) (4.57 multiplier)

40. Rabin v. Concord Assets Group, Inc., No. 89 Civ. 6130, 1991 WL 275757 (S.D. N.Y. Dec. 19, 1991) (4.4 multiplier)

41. Agofonova v. Nobu Corp., No. 07-6926 (S. D. N.Y. Feb. 6, 2009) (4.34 multiplier)

42. Buccellato v. AT & T Operations, Inc., No. C10-00463-LHK, 2011 WL 3348055, at *2 (N.D. Cal. Jun. 30, 2011) (4.3 multiplier)

43. In re AremisSoft Corp. Sec. Litig., 210 F.R.D. 109, 135 (D.N.J. 2002) (4.3 multiplier)

44. Shannon v. Hidalgo County Board of Comm'r, No. 08-369 (D. N.M. June 4, 2009) (4.2 multiplier)

45. Simmons v. Andarko Petroleum Corp., No. CJ-2004-57 (Okla. Dist. Ct. Caddo Co. Dec. 23, 2008) (4.17 multiplier)

46. In re OSI Pharm., Inc. Sec. Litig., No. 04-5505 (E.D. N.Y. Aug. 22, 2008) (4.11 multiplier)

47. Blackmoss Inv., Inc. v. Gravity Co., No. 05-4804 (S. D. N.Y. Nov. 20, 2007) (4.0 multiplier)

48. In re WorldCom, Inc. Sec. Litig., 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2003) (4.0 multiplier)

49. In re NASDAQ Market-Makers Antitrust Litig., 187 F.R.D. 465, 489 (S.D. N.Y. 1998) (3.97 multiplier)

50. Karpus v. Borelli (In re Interpublic Secs. Litig.), No. 02 Civ. 6527, 2004 WL 2397190, at *12 (S.D. N.Y. Oct. 26, 2004 (3.96 multiplier)

51. Vizcaino v. Microsoft Corp., 290 F.3d 1045, 1050-51 (9th Cir. 2002) (3.65 multiplier)

52. Donkerbrook v. Title Guar. Escrow Servs., Inc., No. 10-00616 LEK-RLP, 2011 WL 3649539, at *10 (D. Haw. Aug. 18, 2011) (3.6 multiplier)

53. Turner v. Murphy Oil USA, Inc., 472 F. Supp. 2d 830, 869 (E.D. La. 2007) (3.5 multiplier)

54. Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 123 (2d Cir. 2005) (3.5 multiplier)

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, 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, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 12-cv-11698 MLW

DECLARATION OF STEVEN E. FINEMAN IN SUPPORT OF THE RESPONSE AND OBJECTIONS OF LIEFF CABRASER HEIMANN & BERNSTEIN, LLP TO THE SPECIAL MASTER'S REPORT AND RECOMMENDATIONS

Steven E. Fineman declares and says:

1. I am the Managing Partner of Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser"). I submit this Declaration on behalf of Lieff Cabraser in support of the Response and Objections of Lieff Cabraser Heiman & Bernstein, LLP to the Special Master's Report and Recommendations ("Report").

A. Documents Cited in Lieff Cabraser's Response and Objections

2. Attached as Exhibit A is a copy of the April 5, 2017 Presentation made by Lieff Cabraser to the Special Master (LCHB 0000001-0067).

3. Attached as Exhibit B is a copy of Lieff Cabraser's Responses to Special Master Hon. Gerald E. Rosen's (Ret.) First Set of Interrogatories Due on July 10, 2017, dated July 10, 2017.

4. Attached hereto as Exhibit C is a copy of Special Master Gerald E. Rosen's (Ret.) First Request for the Production of Documents to Lieff Cabraser Heimann & Bernstein, LLP, and Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories to Lieff Cabraser Heimann & Bernstein, LLP, dated May 18, 2017.

5. Attached as Exhibit D is a copy of Special Master Honorable Gerald E. Rosen's (Ret.) First Request for the Production of Documents to Lieff Cabraser Heimann & Bernstein, LLP and Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories to Lieff Cabraser Heimann & Bernstein, LLP, as revised and annotated, dated May 23, 2017.

6. Attached as Exhibit E is a copy of Lieff Cabraser Heimann & Bernstein, LLP's Responses to Special Master Honorable Gerald E. Rosen's (Ret.) First Request for the Production of Documents, dated May 21, 2017.

7. Attached as Exhibit F is a copy of the Special Master's July 5, 2017 Request for Supplemental Submission from Labaton Sucharow, LLP, Lieff Cabraser Heimann & Bernstein, LLP and Thornton Law Firm, LLP.

8. Attached as Exhibit G is a copy of the Consolidated Response by Labaton Sucharow LLP, Lieff Cabraser Heimann & Bernstein LLP, and Thornton Law Firm LLP to the Special Master's July 5, 2017 Request for Supplemental Submission, dated August 1, 2017.

9. Attached as Exhibit H is a copy of the Expert Declaration of William B. Rubenstein, dated July 31, 2017.

10. Attached as Exhibit I is a copy of Lieff Cabraser Heimann & Bernstein, LLP's Responses to Special Master Honorable Gerald E. Rosen's (Ret.) Supplemental Interrogatories Due on August 11, 2017, dated August 11, 2017.

11. Attached as Exhibit J is a copy of Lieff Cabraser Heimann & Bernstein, LLP's Responses to Special Master Honorable Gerald E. Rosen's (Ret.) Supplemental Request for the Production of Documents dated August 11, 2017.

12. Attached as Exhibit K is a copy of the Special Master's Request for Additional Supplemental Submission from Labaton Sucharow, LLP, Lieff Cabraser Heimann & Bernstein, LLP and Thornton Law Firm, LLP, dated September 7, 2017.

13. Attached as Exhibit L is a copy of the Response by Lieff Cabraser Heimann & Bernstein, LLP to the Special Master's September 7, 2017 Request for Supplemental Submission, dated November 3, 2017.

14. Attached as Exhibit M is a copy of a March 25, 2018 email from William F. Sinnott to Richard M. Heimann concerning evidence of Lieff Cabraser's "state of mind" concerning Chargois.

15. Attached as Exhibit N is a copy of the Response by Lieff Cabraser Heimann & Bernstein, LLP to the March 25, 2018 request by the Special Master.

16. Attached as Exhibit P is Opinion and Order, dated June 25, 2018, in *In Re Petrobras Securities Litigation*, No. 14-CV-9662 (JSR).

B. The Firm's Expenses and Lodestar Incurred in Responding to the Special Master's Investigation.

17. The firm has spent $1,340,715.11 in out-of-pocket expenses in responding to the Special Master's investigation and Report to date, including its share of the Special Master's fees and expenses and the firm's expert witness and travel costs. Attached hereto as Exhibit O is a summary of those expenses.

18. As of June 26, 2018, Lieff Cabraser has spent $1,963,110 in lodestar (at the firm's 2018 rates) in responding to the Special Master's investigation and Report. I do not here attach a lodestar summary or the relevant time reports for those attorneys and staff who have represented the firm in this matter, but will do so upon request from the Court.

C. Relevant Facts About Lieff Cabraser's Practice

1. Lieff Cabraser's Complex Litigation Practice Involves Large Scale Document Review and Analysis.

19. Lieff Cabraser is a plaintiff-side litigation firm founded in 1972, based in San Francisco, California, with additional offices in New York, New York, Nashville, Tennessee, and Seattle, Washington. More than 100 attorneys, including partners, associates, and staff attorneys currently work for the firm. Lieff Cabraser engages in predominantly contingent fee practice for plaintiff classes, groups and individuals, on behalf of public and private institutional investors, small business, shareholders, consumers and employees. The firm also occasionally represents plaintiffs on an hourly basis.

20. Lieff Cabraser has litigated and resolved hundreds of class action lawsuits and

thousands of group and individual cases (many in the context of multi-district litigation ("MDL") proceedings), including in the fields of securities and financial fraud. Most of the firm's cases involve major corporate defendants (e.g., banks and other financial institutions, pharmaceutical and medical device companies, oil and energy companies, technology corporations, and consumer product manufacturers). These kinds of defendants are represented by the largest and most sophisticated law firms in the world. Most of the firm's large, complex cases involve production by defendants or enormous numbers of pages of documents (frequently in the millions).

21. Lieff Cabraser staffs its complex cases to maximize effectiveness and efficiency in light of the defendants' significant advantage in economic and personnel resources. The firm's complex cases are typically supervised by a senior partner, and staffed with an additional senior partner and one or more junior partners, and the appropriate number of associates, staff attorneys and litigation support personnel (e.g., paralegals, financial analysts, investigators, and the like). Investigations, pleadings, briefs, written discovery, depositions, court appearances, trial and settlement are handled by partners and associates depending on the level of experience required. Document review, analysis, issue memoranda and witness kits (for deposition and trial) are conducted and prepared by a combination of partners, associates, and staff attorneys.

2. Lieff Cabraser's General Use of Staff Attorneys.

22. Lieff Cabraser, like most plaintiff-side litigation firms that handle large, complex cases, uses staff attorneys to support the firm's organization, reading, coding and analysis of the vast number of documents produced in the cases. Lieff Cabraser staff attorneys support all aspects of the firm's complex cases by identifying documents and frequently drafting issue, witness and liability memoranda. The work product generated by the firm's staff attorneys is used, for example, in support of class certification, in preparation for the conduct of fact and

expert depositions, in opposition to motions for summary judgment, settlement negotiations, and in other pre-trial and trial proceedings.

23. The firm's staff attorneys come from solid to excellent law schools, generally have years of experience in civil litigation and in document review and analysis in complex cases. Many of the firm's staff attorneys are paid directly by the firm and receive benefits provided by the firm. Other firm staff attorneys work at the firm's direction, but are paid directly by agencies that bill the firm for those lawyers' services.

24. During and since the State Street Action, Lieff Cabraser has employed as many as 30 staff attorneys at one time who are paid directly by the firm. Given the number of large complex cases the firm handles at one time, Lieff Cabraser sometimes has need for attorney document review and analysis support beyond the firm's available staffing (for example, the firm may just need additional attorneys, or may require lawyers with specific subject experience or language expertise). When such a need arises, the firm seeks and receives resumes from "preferred" agencies; preferred because those agencies have long-standing relationships with the firm and understand the lawyer qualifications and experience the firm requires. Frequently, attorneys who start working for the firm while paid by an agency transition to direct employment by the firm.

25. Whether on Lieff Cabraser's payroll or paid via an agency, all firm staff attorneys have comparable educational backgrounds and work experiences, and all perform substantially the same document review and analysis functions. And, all utilize, to varying degrees, the firm's infrastructure and resources, including physical office space (for the majority working in firm offices instead of remotely); information technology support (both in the office and remotely); administrative support (e.g., human resources for employment matters and coordination with

agencies, accounting for payroll and interactions with agencies, and word processing for the submission of time records and the production of memoranda); assistance from the firm's litigation support department for training and database assistance; supervision from firm partners and senior associates; and, the cost to the firm for the staff attorneys' services. The firm's staff attorneys, both those on the firm's payroll and paid by an agency, are covered by the firm's legal malpractice insurance policies.

26. Not all federal and state employment laws that apply to the relationship between Lieff Cabraser and its employees apply to agency attorneys working under the firm's direction. Nevertheless, the firm expects its agency lawyers to abide by the firm's rules and practices, and agency attorneys are protected by state laws prohibiting harassment and discrimination in the workplace. The firm, through its human resources department, provides all personnel, whether employees of the firm, agency attorneys, or other contractors, with policies for behavioral conduct and on how to report misconduct of others.

3. Lieff Cabraser's Hourly Rates, Including for Staff Attorneys, Are Market Driven and Routinely Approved.

27. Although the firm is compensated predominantly on a contingent fee basis, Lieff Cabraser's attorneys and litigation staff maintain contemporaneous time records that identify specific tasks performed and the amount of time devoted to those tasks. The firm's contemporaneously recorded time, when multiplied by applicable hourly rates, generates what is known as "lodestar." In certain class actions handled by the firm, aggregate lodestar is used as a "cross-check" to assure that the firm's fee in a "percentage-of-the-recovery" context is appropriate (i.e., that the multiplier on the lodestar is not excessive). In other class actions the firm is compensated based on its lodestar plus an appropriate multiplier. The firm also uses its lodestar figures in cases for hourly rate paying clients. Lieff Cabraser periodically has bill-

paying clients who pay the firm's hourly rates.

28. All Lieff Cabraser hourly rates, including those for staff attorneys (whether employed directly by the firm or through an agency) are set based on the firm's understanding of the appropriate market rates for a lawyer's services, primarily in the San Francisco and New York market places. The firm's management evaluates and adjusts hourly rates on an annual basis, based on the firm's historical rates at the time, publically available fee applications during the preceding year, developments in the case law during the preceding year, fee awards and hourly rates paid to the firm during the preceding year, and publically available salary surveys. Consistent with our experience and the applicable law, the firm does not set hourly rates for any attorney, including staff attorneys (whether on the firm's payroll or employed through an agency), based on what the firm pays them (or for them).

29. For a number of years prior to 2016, hourly rates of the firm's staff attorneys were set to be consistent with the rates of "on-track" firm attorneys with the same or comparable levels of experience. However, as the firm's staff attorneys (payroll and agency) became increasingly experienced and senior, that approach began to result in rates the firm felt were too high. Therefore, beginning in 2016, with limited exceptions, all firm staff attorneys were assigned an hourly rate of $415 per hour (then 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 Lieff Cabraser. The firm determined this to be a fair and appropriate rate, even though Lieff Cabraser's staff attorneys, by and large, have many more than four years of relevant experience.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 29th day of June, 2018.

/s Steven E. Fineman

Steven E. Fineman
Lieff Cabraser Heimann & Bernstein, LLP
250 Hudson Street, 8th Floor
New York, New York 10018
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EXHIBIT A
(REDACTED)

Lieff Cabraser Heimann & Bernstein
Attorneys at Law

Arkansas Teacher Retirement System
v
State Street Bank and Trust Company

United States District Court
District of Massachusetts
No. 11-cv-10230 MLW

Richard M. Heimann
Steven E. Fineman
Daniel P. Chiplock

PRESENTATION TO SPECIAL MASTER JUDGE ROSEN

Confidential – Attorney Work Product, Subject to Protective Order

INTRODUCTION

- Richard M. Heimann – Lieff Cabraser's General Counsel and Chair of the firm's Securities and Financial Fraud Practice Group.
- Steven E. Fineman – Lieff Cabraser's Managing Partner and senior member of the firm's Securities and Financial Fraud Practice Group.
- Daniel P. Chiplock – Senior member of the firm's Securities and Financial Fraud Practice Group and day-to-day lead counsel on the *State Street* case.

Overview of Presentation

About Lieff Cabraser

- Plaintiffs-side litigation firm founded in 1972 and based in San Francisco, California.
- Predominantly contingency fee practice for plaintiff classes, groups and individuals (e.g., public and private institutional investors, small businesses, shareholders, consumers and employees).
- The firm occasionally represents plaintiffs on an hourly basis.
- More than 100 attorneys, including partners, associates and staff attorneys currently work for the firm, primarily in the San Francisco and New York marketplaces.

About Lieff Cabraser (cont'd)

- The firm has litigated and resolved hundreds of class action lawsuits and thousands of group and individual cases.
- These kinds of cases involve major corporate defendants (e.g., banks and other financial institutions; pharmaceutical and medical device companies; oil and energy companies; technology corporations; and consumer product manufacturers).
- These kinds of defendants are represented by the largest and most sophisticated law firms in the world.

How Lieff Cabraser Staffs Large Complex Cases

- Large complex cases are staffed to maximize effectiveness and efficiency in light of the defendants' advantages and resources.
- Complex cases are typically supervised by a senior partner, and staffed with an additional senior partner and one or more junior partners, the necessary number of associates, staff attorneys and litigation support personnel (e.g., paralegals, financial analysts, investigators, and the like).
- Investigations, pleadings, briefs, written discovery, depositions, court appearances, trial and settlement, are handled by partners and associates depending on the level of experience required.

How Lieff Cabraser Staffs Large Complex Cases (cont'd)

- Document review, analysis, issue memoranda and witness kits (for deposition and trial) are conducted and prepared by a combination of junior partners, associates, and staff attorneys.

How Lieff Cabraser Sets Hourly Rates, Including for Staff Attorneys

- All Lieff Cabraser hourly rates, including those for staff attorneys, are set based on the firm's understanding of the appropriate market rates for our lawyer's services, primarily in the San Francisco and New York marketplaces.
- The firm's managing partner, in consultation with the firm's executive committee, evaluates and adjusts hourly rates on an annual basis, based on the firm's historical rates at the time, publically available fee applications during the preceding year, developments in the case law during the preceding year, fee awards and hourly rates paid to the firm during the preceding year, and publically available salary surveys.

How Lieff Cabraser Sets Hourly Rates, Including for Staff Attorneys (cont'd)

- Consistent with our experience and the applicable law, the firm does not set hourly rates for any attorney, including staff attorneys, based upon what the firm pays them. Again, rates are based on what are reasonable in the applicable marketplaces for our services.

State Street Case

- Lieff Cabraser has been involved since 2008 in investigating and pursuing claims of alleged deceptive practices and overcharges by custodial banks related to foreign currency exchange ("FX") products and services.
- We were co-counsel of record in qui tam lawsuits originally filed under seal in California (the "California Action"), as well as other states, against State Street.
- The California Action was unsealed in October 2009 by the intervention of the Attorney General for the State of California.
- Before that point and afterwards, Lieff Cabraser investigated possible claims to be brought on a class basis for the benefit of custodial customers who would not otherwise benefit from any unsealed qui tam lawsuits.

State Street Case (cont'd)

- Based on its institutional knowledge, Lieff Cabraser was associated in to the customer class lawsuit being investigated by Labaton Sucharow LLP ("Labaton") on behalf of ARTRS.
- Lieff Cabraser helped research and file the first class complaint (in early 2011) in this action, with particular responsibility for claims under M.G.L. ch. 93A.
- We also attended every mediation session with defendants and additional meetings with co-counsel throughout the life of the case, and helped review and analyze more than nine million pages of documents produced by State Street.

BNYM FX Case

- Lieff Cabraser simultaneously served as co-lead counsel in the BNYM FX customer class litigation, and was one of three firms that led the entire MDL.
- The first BNYM class cases were filed in 2011, were MDL'd in 2012, and then intensively litigated until the close of fact discovery in January 2015.
- More than 120 total depositions were taken and defended, and over 29 million pages reviewed.
- Global settlement resulted in $504 million for benefit of BNYM customers, with $335 million attributed to resolution of the customer class cases.

Resolution of *BNYM/State Street* Cases

- The Jan. 2015 close of fact discovery in BNYM FX led to intensive settlement discussions, leading to global agreement to settle that case by March 2015.
- The end of fact discovery in BNYM freed up time of more than a dozen Lieff Cabraser staff attorneys who had developed expertise in custodial FX issues to assist with completing the review and analysis of State Street documents.
- Settlement of BNYM case heightened pressure either for State Street case to be resolved or for the parties to proceed with class cert discovery and depositions.

Resolution of *State Street* Case

- The parties agreed to extend the State Street mediation deadline from December 2014 to April 2015.
- The parties continued to mediate, understanding that further extensions likely would not be sought.
- As late as May 2015, State Street still had not presented a settlement number to Plaintiffs, who remained hard at work analyzing the documents produced in preparation for potential termination of the mediation without resolution.

Resolution of *State Street* Case

- The parties in *State Street* reached agreement in principle to settle class case for $300 million on **June 30, 2015**.
- Document reviewers closed out assignments and memoranda they were in the middle of drafting, with such work concluded by early July 2015.
- The settlement term sheet was not executed until September 2015, during which time parties continued to negotiate potential plan of allocation (discussed with the Dept. of Labor ("DoL")).
- The settlement remained contingent on resolution of other government inquiries and satisfaction of DoL concerns regarding allocation.

Resolution of *State Street* Case

- Almost nine months passed after the Term Sheet was executed in September 2015, while State Street negotiated resolutions with the Department of Justice and the SEC.
- The parties next appeared before Judge Wolf at a status conference in June 2016, at which they notified the Court of the pending class settlement and plans to submit it for preliminary approval.
- At that hearing, Judge Wolf opined both on the likely fairness of the settlement as well as the reasonableness of a 25% fee as a "starting point."

Fee Application Process in *State Street*

- Labaton, as lead counsel, was responsible for gathering and reviewing all fee declarations and lodestar reports from co-counsel.
- Lieff Cabraser gathered its lodestar and expense reports in early September 2016, and sent its draft fee declaration to Labaton, who sent suggested edits to Lieff Cabraser. Among those edits were the suggestion to remove any timekeepers who billed less than 5 hours (which we did).

Background of Lieff Cabraser Staff Attorneys Who Worked on *State Street*

- The Lieff Cabraser staff attorneys who worked on *State Street* had extensive document review and analysis experience at the time of their assignment to the case: Five had more than 15 years of experience; six had between 10 and 15 years of experience; and six more had between 5 and 10 years of experience.
- All of the Lieff Cabraser staff attorneys who worked on *State Street* had prior document review experience for Lieff Cabraser.
- Of the 18 Lieff Cabraser staff attorneys who worked on State Street, 13 also worked on the BNYM FX litigation (averaging nearly 2,200 hours each prior to Jan. 2015), where they developed expertise in FX pricing, trading timing and processes, the request for proposals ("RFP") process, and the manner in which custodial banks were alleged to have overcharged their customers on FX.

Background of Lieff Cabraser Staff Attorneys Who Worked on *State Street (cont'd)*

- "Much of the necessary work involved in prosecuting the Customer Class Cases involved the review, analysis, and application of millions of pages of documents, from both Defendants and third parties. This was neither make-work, nor routine. Rather, it was important work that had to be performed under tight time constraints. It was entrusted primarily to attorneys experienced in document analysis in complex cases, who had proven themselves to Lead Class Counsel in other cases. These attorneys communicated daily with those responsible for briefing, depositions, and related deposition preparation, and this interaction made it possible to mine mountains of raw data, sifting the wheat from the chaff and identifying the critical facts within the tight deadlines set by this Court."
- *In re Bank of New York Mellon Corp. Forex Transactions Litigation*, No. 12-MD-2335 (LAK), S.D.N.Y., Declaration of John C. Coffee, Jr. in Support of Motion for Final Approval of Settlement and an Award of Attorneys' Fees and Service Awards, and Reimbursement of Litigation Expenses filed 8/17/15.

Background of Lieff Cabraser Staff Attorneys Who Worked on *State Street (cont'd)*

- Of the 18 Lieff Cabraser staff attorneys who worked on *State Street*, none were "temporary" employees. Each had a history with the firm working on multiple Lieff Cabraser cases. Indeed, of the 18 Lieff Cabraser staff attorneys who worked on *State Street*, 13 continue to this day to work on document review and analysis projects for the firm.
- Set forth on the pages that follow is biographical information about each of the Lieff Cabraser staff attorneys who worked on *State Street*.

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Name	Undergrad	Law School	Grad. Year	Years in Practice (following first bar admission)	Billing Rate	Rate Equivalency	Worked on BONY Mellon
Tanya Ashur	University of Illinois	Chicago-Kent College of Law	2000	17+	$415	4th year associate	Yes
Joshua Bloomfield	University Pennsylvania	UCLA School of Law	2000	16+	$515	Class of 2008	Yes
Elizabeth Brehm	Boston University	Hofstra University School of Law	2008	9+	$415	4th year associate	No
Jade Butman	Dartmouth College	University of Pittsburgh School of Law	1997	20+	$515	Class of 2008	No
James Gilyrad	San Francisco State University	University of San Francisco School of Law	2002	15+	$415	4th year associate	Yes
Kelly Gralewski	California State University, Chico	California Western School of Law	1997	19+	$415	4th year associate	Yes
Christopher Jordan	University of North Carolina	Stanford Law School	2004	6+	$415	4th year associate	Yes
Jason Kim	University of California, Davis	Thomas Jefferson School of Law	2009	8+	$415	4th year associate	Yes
James Leggett	University of California, Davis	Santa Clara University School of Law	2012	5+	$415	4th year associate	Yes

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Name	Undergrad	Law School	Grad. Year	Years in Practice (following first bar admission)	Billing Rate	Rate Equivalency	Worked on BONY Mellon
Coleen Liebmann	University of the Pacific	University of San Francisco School of Law	2003	11+	$415	4th year associate	No
Andrew McClelland	University of California, Davis	McGeorge School of Law	2008	9+	$415	4th year associate	Yes
Scott Miloro	Cornell University	Cardozo School of Law	2006	11+	$415	4th year associate	Yes
Leah Nutting	University of California, Berkeley	Harvard Law School	2002	15+	$415	4th year associate	Yes
Marissa Oh	Rice University	Stanford Law School	2004	17+	$515	Class of 2008	Yes
Peter Roos		University of Limburg J.D. University of San Francisco School of Law L.L.M.	1989 2002	27+ (15+ in the U.S.)	$415	4th year associate	No
Ryan Sturtevant	University of California, Santa Barbara	University of California, Hastings College of the Law	2005	11+	$415	4th year associate	No
Virginia Weiss	University of Northern Iowa	University of Kansas School of Law	2007	10+	$415	4th year associate	Yes
Jonathan Zaul	University of California, Berkeley	University of San Francisco School of Law	2009	8+	$415	4th year associate	Yes

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TANYA ASHUR

EDUCATION – University of Illinois, Urbana, Illinois, B.A. 1997; Chicago-Kent College of Law, Chicago, Illinois, J.D. 2000.

ADMITTED TO PRACTICE – Illinois Bar, 2000; California Bar, 2002.

WORK EXPERIENCE SUMMARY – Ms. Ashur worked as an associate for Deloitte & Touche, Adams Nye, and Gordon & Rees, all in San Francisco, California. Prior to working for Lieff Cabraser, Ms. Ashur had extensive document review and analysis experience in complex litigation matters for Lathman Watkins, Orrick, Google, Fujitsu, and Gibson Dunn.

LIEFF CABRASER WORK HISTORY – Ms. Ashur began working for Lieff Cabraser in 2013 as a document review attorney. From 2013 into 2015, Ms. Ashur worked extensively on the BONY Mellon Forex Litigation. In 2015, Ms. Ashur devoted 843.5 hours to document review and analysis in the State Street Forex Litigation. Ms. Ashur is currently engaged by Lieff Cabraser on document review and analysis projects.

Ms. Ashur's time in the State Street Forex Litigation was calculated at $415 per hour. That was the hourly rate of fourth year associates working in the firm's New York and San Francisco offices in 2016.

OBSERVATIONS – Ms. Ashur is an experienced attorney, with more than 17 years in practice, much of it reviewing and analyzing documents and generating fact and witness-specific memoranda in complex cases for major American law firms. Her work was particularly valuable in State Street as she had developed expertise in evaluating comparable documents in the BONY Mellon Forex Litigation.

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JOSHUA BLOOMFIELD

EDUCATION – University of Pennsylvania, Pennsylvania, Philadelphia, PA, B.A. 1996; UCLA School of Law, Los Angeles, CA, J.D. 2000.

ADMITTED TO PRACTICE - California Bar, 2001.

WORK EXPERIENCE SUMMARY – Mr. Bloomfield worked as an associate for Jeffer Mangels in Los Angeles, California and Holland & Knight in San Francisco, California, before starting his own civil and criminal litigation firm. Prior to working for Lieff Cabraser, Mr. Bloomfield had extensive document review and analysis experience in complex litigation matters for King & Spalding, Paul Hastings, Morrison Foerster, Gibson Dunn, Wilmer Hale, Orrick, Sidley Austin, Jones Day, DLA Piper, and Skadden.

LIEFF CABRASER WORK HISTORY – Mr. Bloomfield began working for Lieff Cabraser in 2013 as a document review attorney. From 2013 into 2015, Mr. Bloomfield worked extensively on the BONY Mellon Forex Litigation. In 2013 and 2015, Mr. Bloomfield devoted 2,033.20 hours to document review and analysis in the State Street Forex Litigation. Mr. Bloomfield left the firm in 2015.

Mr. Bloomfield's time in the State Street Forex Litigation was calculated at $515 per hour. That was the hourly rate of the class of 2008 in the firm's New York and San Francisco offices in 2016.

OBSERVATIONS – Mr. Bloomfield is an experienced attorney, with more than 16 years of practice, much of it reviewing and analyzing documents and generating fact and witness-specific memoranda in complex cases for major American law firms. His work was particularly valuable in State Street as he had developed expertise in evaluating comparable documents in the BONY Mellon Forex Litigation.

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ELIZABETH BREHM

EDUCATION – Boston University, Boston, Mass, B.S. 2001; Hofstra University School of Law, Hempstead, NY, J.D., magna cum laude, 2008.

ADMITTED TO PRACTICE – New York Bar, 2008.

WORK EXPERIENCE SUMMARY – Ms. Brehm worked as an associate for Winston & Strawn and Kirby McInerney, both in New York, New York. During her time at Kirby – a leading plaintiff-side litigation firm – Ms. Brehm focused on antitrust, securities and financial fraud cases, and gained experience with numerous document review projects.

LIEFF CABRASER WORK HISTORY – Ms. Brehm began working for Lieff Cabraser in 2013 as a document review attorney. From 2013 into early 2015, Ms. Brehm devoted 1,682.90 hours to document review and analysis in the State Street Forex Litigation. Ms. Brehm left the firm in 2015.

Ms. Brehm's time in the State Street Forex Litigation was calculated at $415 per hour. That was comparable to the hourly rate of fourth year associates working in the firm's New York and San Francisco offices in 2016.

OBSERVATIONS – Ms. Brehm is an experienced attorney, with more than nine years of experience, much of it reviewing and analyzing documents and generating fact and witness-specific memoranda in complex cases. Her work was particularly valuable in State Street as she had developed expertise in evaluating documents in financial fraud cases at the Kirby firm.

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JADE BUTMAN

EDUCATION – Dartmouth College, Hanover, NH, B.A. 1992; University of Pittsburgh School of Law, Pittsburgh, PA, J.D. 1997.

ADMITTED TO PRACTICE – New Hampshire, 1997; New York, 1998; California, 2005.

WORK EXPERIENCE SUMMARY – Ms. Butman worked as an associate for Constantine Cannon (antitrust) and Kaplan Landau (commercial litigation) in New York, New York, and for Keller Grover (consumer class cases) in San Francisco, California. At each firm, Ms. Butman was involved in document review and analysis. Prior to joining Lieff Cabraser, Ms. Butman had additional extensive document review in complex litigation matters for Viacom in New York, and Robbins Geller and Berman DeValerio (plaintiff-side class action firms) in San Francisco, California.

LIEFF CABRASER WORK HISTORY – Ms. Butman worked for Lieff Cabraser in 2014 and 2015 as a document review attorney. In 2015, Ms. Butman devoted 24.00 hours to document review and analysis in the State Street Forex Litigation. Ms. Butman left the firm at the end of 2015.

Ms. Butman's time in the State Street Forex Litigation was calculated at $515 per hour. That was the hourly rate of the class of 2008 in the firm's New York and San Francisco offices in 2016.

OBSERVATIONS – Ms. Butman is an experienced attorney, with more than 20 years of practice, much of it reviewing and analyzing documents and generating fact and witness-specific memoranda in complex cases. Her work was particularly valuable in State Street as she had developed expertise in evaluating documents in complex cases or as associate at several plaintiff-side firms.

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JAMES GILYARD

EDUCATION – San Francisco State University, San Francisco, California, B.A. 1999; University of San Francisco School of Law, San Francisco, California, J.D. 2002.

ADMITTED TO PRACTICE – California Bar, 2002.

WORK EXPERIENCE SUMMARY – Mr. Gilyard worked as an associate for Robbins Geller (plaintiff-side class action firm), in San Francisco, California, where, among other things, he gained extensive experience in document review and analysis. Prior to working for Lieff Cabraser, Mr. Gilyard had additional extensive document review and analysis experience in complex litigation matters for Bingham McCutchen, Morrison & Foerster, and Wilson Sonsini, among others.

LIEFF CABRASER WORK HISTORY – Mr. Gilyard began working for Lieff Cabraser in 2013 as a document review attorney. From 2013 into 2015, Mr. Gilyard worked extensively on the BONY Mellon Forex Litigation. In 2015, Mr. Gilyard devoted 882 hours to document review and analysis in the State Street Forex Litigation. Mr. Gilyard left Lieff Cabraser in late 2016.

Mr. Gilyard's time in the State Street Forex Litigation was calculated at $415 per hour. That was the hourly rate of fourth year associates working in the firm's New York and San Francisco offices in 2016.

OBSERVATIONS – Mr. Gilyard is an experienced attorney, with more than 15 years of practice, much of it reviewing and analyzing documents and generating fact and witness-specific memoranda in complex cases for major American law firms. His work was particularly valuable in State Street as he had developed expertise in evaluating comparable documents in the BONY Mellon Forex Litigation.

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KELLY GRALEWSKI

EDUCATION – California State University, Chico, San Diego, California, B.S. and B.A. 1992; California Western School of Law, San Diego, California, J.D. 1997.

ADMITTED TO PRACTICE – California Bar, 1998

WORK EXPERIENCE SUMMARY – Ms. Gralewski worked as an associate for Peterson & Price, a real estate, business law and dispute resolution firm in San Diego, California. While there, Ms. Gralewski gained experience in the review and analysis of corporate documents

LIEFF CABRASER WORK HISTORY – Ms. Gralewski began working for Lieff Cabraser in 2009 as a document review attorney. Since then, and continuing to today, Ms. Gralewski worked on a number of financial fraud cases at Lieff Cabraser. In 2012 and 2015, Ms. Gralewski worked on the BONY Mellon Forex Litigation. In 2013 and 2015, Ms. Gralewski devoted 1,478.90 hours to document review and analysis in the State Street Forex Litigation.

Ms. Gralewski's time in the State Street Forex Litigation was calculated at $415 per hour. That was the hourly rate of fourth year associates working in the firm's New York and San Francisco offices in 2016.

OBSERVATIONS – Ms. Gralewski has been a California lawyer since 1998, with more than nine years of experience in reviewing and analyzing documents and generating fact and witness-specific memoranda in complex cases at Lieff Cabraser. Her work was particularly valuable in State Street as she had developed expertise in evaluating comparable documents in the BONY Mellon Forex Litigation.

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CHRISTOPHER JORDAN

EDUCATION – University of North Carolina, Chapel Hill, North Carolina, B.A. 2000; Stanford Law School, Stanford, California, J.D. 2004.

ADMITTED TO PRACTICE – California Bar, 2011; Texas Bar, 2012.

WORK EXPERIENCE SUMMARY – Mr. Jordan worked extensively in the management, supervision of, and execution of large scale document review and analysis projects in complex litigation matters for Debevoise & Plimpton in New York, Dynegye and Synergy in Houston, Texas, and Troutman Sanders in Atlanta, Georgia.

LIEFF CABRASER WORK HISTORY – Mr. Jordan began working for Lieff Cabraser in 2012 as a document review attorney. In 2014 and 2015, Mr. Jordan worked extensively on the BONY Mellon Forex Litigation. In 2015, Mr. Jordan devoted 539.90 hours to document review and analysis in the State Street Forex Litigation attributable to Lieff Cabraser. Mr. Jordan is currently engaged by Lieff Cabraser on document review and analysis projects.

Mr. Jordan's time in the State Street Forex Litigation was calculated at $415 per hour. That was the hourly rate of fourth year associates working in the firm's New York and San Francisco offices in 2016.

OBSERVATIONS – Mr. Jordan has more than six years of experience reviewing and analyzing documents and generating fact and witness-specific memoranda in complex cases. His work was particularly valuable in State Street as he had developed expertise in evaluating comparable documents in the BONY Mellon Forex Litigation.

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JASON KIM

EDUCATION – University of California at Davis, Davis, California, B.A. 2002; Thomas Jefferson School of Law, San Diego, California, J.D. 2009.

ADMITTED TO PRACTICE – California Bar, 2009.

WORK EXPERIENCE SUMMARY – Mr. Kim worked as an associate for the full service litigation firm, Renchner Law Group in San Francisco, California, before starting his own civil litigation law firm in Santa Clara, California. Prior to working for Lieff Cabraser, Mr. Kim had extensive document review and analysis experience in complex litigation matters for McDermott Will & Emory, Quinn Emmanuel, and Crowell Moring.

LIEFF CABRASER WORK HISTORY – Mr. Kim began working for Lieff Cabraser in 2011 as a document review attorney. From 2013 into 2015, Mr. Kim worked extensively on the BONY Mellon Forex Litigation. In 2015, Mr. Kim devoted 904 hours to document review and analysis in the State Street Forex Litigation. Mr. Kim is currently engaged by Lieff Cabraser on document review and analysis projects.

Mr. Kim's time in the State Street Forex Litigation was calculated at $415 per hour. That was the hourly rate of fourth year associates working in the firm's New York and San Francisco offices in 2016.

OBSERVATIONS – Mr. Kim is an experienced attorney, with more than eight years of experience, much of it reviewing and analyzing documents and generating fact and witness-specific memoranda in complex cases for major American law firms. His work was particularly valuable in State Street as he had developed expertise in evaluating comparable documents in the BONY Mellon Forex Litigation.

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JAMES LEGGETT

EDUCATION – University of California, Davis, Davis, California, B.A. 2004; Santa Clara University School of Law, Santa Clara, California, J.D., cum laude, Order of the Coif, 2012.

ADMITTED TO PRACTICE – California Bar, 2012.

WORK EXPERIENCE SUMMARY – Prior to law school, Mr. Leggett worked as a private banker at UMB Bank in Denver, Colorado for almost four years. Immediately after law school, Mr. Leggett performed document review and analysis in financial fraud and employment cases at the plaintiff-side litigation firm Schneider Wallace in San Francisco, California.

LIEFF CABRASER WORK HISTORY – Mr. Leggett began working for Lieff Cabraser in 2013 as a document review attorney. From 2013 into 2015, Mr. Leggett worked on the BONY Mellon Forex Litigation. In 2015, Mr. Leggett devoted 893 hours to document review and analysis in the State Street Forex Litigation. In 2016, Mr. Leggett is currently engaged by Lieff Cabraser on document review and analysis projects.

Mr. Leggett's time in the State Street Forex Litigation was calculated at $415 per hour. That was the hourly rate of fourth year associates working in the firm's New York and San Francisco offices in 2016.

OBSERVATIONS – Mr. Leggett has spent more than four years at Lieff Cabraser reviewing and analyzing documents and generating fact and witness-specific memoranda in complex cases. His work was particularly valuable in State Street as he had developed expertise in evaluating comparable documents in the BONY Mellon Forex Litigation.

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COLEEN LIEBMANN

EDUCATION – University of the Pacific, B.A. 1992; University of San Francisco School of Law, San Francisco, California, J.D. 2003.

ADMITTED TO PRACTICE – California Bar, 2006.

WORK EXPERIENCE SUMMARY – Ms. Liebmann has more than 11 years of experience in document and privilege review and analysis in complex litigation matters for a number of the country's most prestigious law firms, including Williams & Connolly, Latham & Watkins, DLA Piper, Quinn Emmanuel, Morrison Foerster, Perkins Coie, Wilmer Hale, O'Melveny & Myers, Jones Day, and Farella Braun & Martel, among others.

LIEFF CABRASER WORK HISTORY – Ms. Liebmann began working for Lieff Cabraser in 2014 as a document review attorney. In 2015, Ms. Liebmann devoted 24 hours to document review and analysis in the State Street Forex Litigation. Ms. Liebmann is currently engaged by Lieff Cabraser on document review and analysis projects.

Ms. Liebmann's time in the State Street Forex Litigation was calculated at $415 per hour. That was the hourly rate of fourth year associates working in the firm's New York and San Francisco offices in 2016.

OBSERVATIONS – Ms. Liebmann is an experienced document review attorney, with more than 11 years reviewing and analyzing documents and generating fact and witness-specific memoranda in complex cases for major American law firms.

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ANDREW McCLELLAND

EDUCATION – University of California, Davis, Davis, California, B.A. 2002; University of the Pacific, McGeorge School of Law, Sacramento, CA, J.D., Order of the Coif, 2008.

ADMITTED TO PRACTICE – California Bar, 2008.

WORK EXPERIENCE SUMMARY – Mr. McClelland worked as an associate for the construction defect litigation firm, Boornazian, Jensen & Garthe in Oakland, California, and as an associate for a similar firm, Lorber Greenfield & Polito, in San Francisco, California. At both firms, Mr. McClelland had extensive document review and analysis experience. In addition, Mr. McClelland has conducted document review and analysis in complex litigation matters for Bingham and Smith Lillis Pitha, in San Francisco, California.

LIEFF CABRASER WORK HISTORY – Mr. McClelland began working for Lieff Cabraser in 2013 as a document review attorney. From 2013 into 2015, Mr. McClelland worked extensively on the BONY Mellon Forex Litigation. In early 2015, Mr. McClelland devoted 58 hours to document review and analysis in the State Street Forex Litigation. In February and March 2015, Mr. McClelland devoted additional time to the State Street matter, while housed in LCHB's offices, but was paid for that time by the Thornton firm. Mr. McClelland left Lieff Cabraser in early 2015 to pursue a different legal job.

Mr. McClelland's time in the State Street Forex Litigation was calculated at $415 per hour. That was the hourly rate of fourth year associates working in the firm's New York and San Francisco offices in 2016.

OBSERVATIONS – Mr. McClelland is an experienced attorney, with more than nine years of experience, much of it reviewing and analyzing documents and generating fact and witness-specific memoranda in complex cases. His work was particularly valuable in State Street as he had developed expertise in evaluating comparable documents in the BONY Mellon Forex Litigation.

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District of Massachusetts
No. 11-cv-10230 MLW

SCOTT MILORO

EDUCATION – Cornell University, Ithaca, New York, B.S. 1994; State University of New York at Buffalo, Buffalo, New York, M.S. 1996; Cardozo School of Law, New York, New York, J.D. 2006.

ADMITTED TO PRACTICE – New York Bar, 2006; United States Patent and Trademark Office, 2006.

WORK EXPERIENCE SUMMARY – After law school, Mr. Miloro spent more than three years as an associate at the intellectual property firm of Ohlandt, Greely, Ruggiero & Perle in Stamford, Connecticut. In that capacity, Mr. Miloro gained extensive experience in reviewing and analyzing complex technical documents.

LIEFF CABRASER WORK HISTORY – Mr. Miloro began working for Lieff Cabraser in 2011 as a document review attorney. From 2012 into 2015, Mr. Miloro worked extensively on the BONY Mellon Forex Litigation. In 2015, Mr. Miloro devoted 658.80 hours to document review and analysis in the State Street Forex Litigation. Mr. Miloro is currently engaged by Lieff Cabraser on document review and analysis projects.

Mr. Miloro's time in the State Street Forex Litigation was calculated at $415 per hour. That was the hourly rate of fourth year associates working in the firm's New York and San Francisco offices in 2016.

OBSERVATIONS – Mr. Miloro is an experienced attorney, with more than 11 years of experience, including more than five years at Lieff Cabraser, much of it reviewing and analyzing documents and generating fact and witness-specific memoranda in complex cases. His work was particularly valuable in State Street as he had developed expertise in evaluating comparable documents in the BONY Mellon Forex Litigation.

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LEAH NUTTING

EDUCATION – University of California Berkeley, Berkeley, California, B.A. 1999; Harvard Law School, Cambridge, Massachusetts, J.D. 2002.

ADMITTED TO PRACTICE – California Bar, 2002.

WORK EXPERIENCE SUMMARY – Ms. Nutting was an associate in the securities litigation group at Clifford Chance, and then in the general litigation group at Orrick, both in San Francisco, California. During her four years at those two firms, Ms. Nutting had extensive experience in investigating complex financial fraud matters, including experience in document review and analysis. Ms. Nutting also has engaged in extensive document review in complex litigation matters for Kilpatrick Townsend, Bloomberg, and Morrison Foerster.

LIEFF CABRASER WORK HISTORY – Ms. Nutting began working for Lieff Cabraser in 2012 as a document review attorney. From 2012 into 2015, Ms. Nutting worked extensively on the BONY Mellon Forex Litigation. In 2013 and 2015, Ms. Nutting devoted 1,940.10 hours to document review and analysis in the State Street Forex Litigation. Ms. Nutting is currently engaged by Lieff Cabraser on document review and analysis projects.

Ms. Nutting's time in the State Street Forex Litigation was calculated at $415 per hour. That was the hourly rates of fourth year associates working in the firm's New York and San Francisco offices in 2016.

OBSERVATIONS – Ms. Nutting is an experienced attorney, with more than 15 years of experience, much of it reviewing and analyzing documents and generating fact and witness-specific memoranda in complex cases for major American law firms. Her work was particularly valuable in State Street as she had developed expertise in evaluating comparable documents in the BONY Mellon Forex Litigation.

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MARISSA OH

EDUCATION – Rice University, Houston, Texas, B.A. 1999; Stanford Law School, Stanford, California, J.D. 2004.

ADMITTED TO PRACTICE – California Bar, 2004.

WORK EXPERIENCE SUMMARY – Ms. Oh (formerly Marissa Lackey) was an associate at Orrick in San Francisco, California, where she gained extensive experience in financial fraud litigation and where her responsibilities included coordination and supervision of document reviews. Ms. Oh also has extensive document review and analysis experience in complex litigation matters at various top tier law firms, including Keker & Van Nest and Morrison Foerster in San Francisco, California.

LIEFF CABRASER WORK HISTORY – Ms. Oh began working for Lieff Cabraser in 2013 as a document review attorney. From 2013 into 2015, Ms. Oh worked extensively on the BONY Mellon Forex Litigation. In 2015, Ms. Oh devoted 800.30 hours to document review and analysis in the State Street Forex Litigation. Ms. Oh is currently engaged by Lieff Cabraser on document review and analysis projects.

Ms. Oh's time in the State Street Forex Litigation was calculated at $515 per hour. That was the hourly rates of the class of 2008 working in the firm's New York and San Francisco offices in 2016.

OBSERVATIONS – Ms. Oh is an experienced attorney, with more than 17 years of experience, much of it reviewing and analyzing documents and generating fact and witness-specific memoranda in complex cases for major American law firms. Her work was particularly valuable in State Street as she had developed expertise in evaluating comparable documents in the BONY Mellon Forex Litigation.

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PETER ROOS

EDUCATION – University of Limburg, Maastricht, The Netherlands, J.D. 1989; University of San Francisco School of Law, L.L.M. 2001.

ADMITTED TO PRACTICE – The Netherlands, 1989; California Bar, 2002.

WORK EXPERIENCE SUMMARY – For more than 18 years, Mr. Roos was an associate and then a partner at Baker & McKenzie in Amsterdam, The Netherlands, and in Palo Alto, California. During those years, Mr. Roos gained extensive experience in financial and corporate transactions and documentation. In more recent years, Mr. Roos has engaged in extensive document review and analysis in complex litigation matters for such major American law firms as Jeffer Mangels, Gibson Dunn, Morrison Foerster, Paul Hastings, and Hopkins & Carley, among others.

LIEFF CABRASER WORK HISTORY – Mr. Roos began working for Lieff Cabraser in 2013 as a document review attorney. In 2015, Mr. Roos devoted 780 hours to document review and analysis in the State Street Forex Litigation. Mr. Roos is currently engaged by Lieff Cabraser on document review and analysis projects.

Mr. Roos's time in the State Street Forex Litigation was calculated at $415 per hour. That was the hourly rates of fourth year associates working in the firm's New York and San Francisco offices in 2016.

OBSERVATIONS – Mr. Roos is an experienced attorney, with more than 27 years of experience as a corporate partner in an international law firm and then reviewing and analyzing documents and generating fact and witness-specific memoranda in complex cases for major American law firms.

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RYAN STURTEVANT

EDUCATION – University of California, Santa Barbara, Santa Barbara, California, B.A. 2001; University of California, Santa Barbara, Santa Barbara, California, M.A. 2003; University of California, Hastings College of the Law, San Francisco, California, J.D. 2005.

ADMITTED TO PRACTICE – California Bar, 2006.

WORK EXPERIENCE SUMMARY – Mr. Sturtevant has gained extensive experience in document review and analysis in complex litigation matters for a number of major American law firms, including Bingham, Cooley, Morrison Foerster, Wilson Sonsini, O'Melveny & Myers, and Jones Day. In particular, Mr. Sturtevant gained experience in securities and financial fraud class actions.

LIEFF CABRASER WORK HISTORY – Mr. Sturtevant began working for Lieff Cabraser in 2013 as a document review attorney. In 2015, Mr. Sturtevant devoted 796 hours to document review and analysis in the State Street Forex Litigation. Mr. Sturtevant is currently engaged by Lieff Cabraser on document review and analysis projects.

Mr. Sturtevant's time in the State Street Forex Litigation was calculated at $415 per hour. That was the hourly rate of fourth year associates working in the firm's New York and San Francisco offices in 2016.

OBSERVATIONS – Mr. Sturtevant is an experienced attorney, with more than 11 years of experience reviewing and analyzing documents and generating fact and witness-specific memoranda in complex cases for major American law firms.

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VIRGINIA WEISS

EDUCATION – University of Northern Iowa, B.A. 2004; University of Kansas School of Law, J.D. 2007.

ADMITTED TO PRACTICE – Minnesota Bar, 2007; California Bar, 2010.

WORK EXPERIENCE SUMMARY – Ms. Weiss has dedicated more than 15 years to document review and analysis in complex litigation matters for numerous law firms and organizations, including Epstein Becker and Crowell and Moring, in San Francisco, California.

LIEFF CABRASER WORK HISTORY – Ms. Weiss began working for Lieff Cabraser in 2014 as a document review attorney in complex financial fraud matters. In 2014 and into 2015, Ms. Weiss worked extensively on the BONY Mellon Forex Litigation. In 2015, Ms. Weiss devoted 473.50 hours to document review and analysis in the State Street Forex Litigation for Lieff Cabraser. She spent additional time on the case in 2015 which was paid by the Thornton firm. Ms. Weiss continues to work on document review and analysis projects for Lieff Cabraser.

Ms. Weiss's time in the State Street Forex Litigation was calculated at $415 per hour That was the hourly rates of fourth year associates working in the firm's New York and San Francisco offices in 2016.

OBSERVATIONS – Ms. Weiss is an experienced attorney, with more than 10 years of experience, much of it reviewing and analyzing documents and generating fact and witness-specific memoranda in complex cases for major American law firms. Her work was particularly valuable in State Street as she had developed expertise in evaluating comparable documents in the BONY Mellon Forex Litigation.

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District of Massachusetts
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JONATHAN ZAUL

EDUCATION – University of California, Berkeley, Berkeley, California, B.A. 2004; University of San Francisco School of Law, San Francisco, California, J.D. 2009.

ADMITTED TO PRACTICE – California Bar, 2009.

WORK EXPERIENCE SUMMARY – Following law school and a judicial clerkship, Mr. Zaul opened his own transactional and civil litigation law firm where he served as the principal.

LIEFF CABRASER WORK HISTORY – Mr. Zaul began working for Lieff Cabraser in 2012 as a document review attorney. From 2013 into 2015, Mr. Zaul worked extensively on the BONY Mellon Forex Litigation. In 2015, Mr. Zaul devoted 495.20 hours to document review and analysis in the State Street Forex Litigation attributable to Lieff Cabraser. Mr. Zaul is currently engaged by Lieff Cabraser on document review and analysis projects.

Mr. Zaul's time in the State Street Forex Litigation was calculated at $415 per hour. That was the hourly rate of fourth year associates working in the firm's New York and San Francisco offices in 2016.

OBSERVATIONS – Mr. Zaul is an experienced attorney, with more than eight years of experience, much of it reviewing and analyzing documents and generating fact and witness-specific memoranda in complex cases for Lieff Cabraser. His work was particularly valuable in State Street as he had developed expertise in evaluating comparable documents in the BONY Mellon Forex Litigation.

Role of Lieff Cabraser Staff Attorneys in *State Street*

- Shared issue coding and secondary review and analysis of over 9 million pages of documents.
- Initial document production was made in January 2013.
- Second production (more than doubling the total volume) was made in December 2013.
- Reviewers tagged documents using more than 30 different issue/doc type codes and six levels of usefulness/relevance.
- Initial coding of documents largely completed by mid-April 2015, after which LCHB reviewers were tasked with preparing detailed memoranda on 18 (out of more than 50) selected themes, issues or witnesses to be further developed in depositions and follow-up discovery. Each memo contained hyperlinks to supporting documents from State Street's production, with some memos accordingly exceeding 100 pages.

Role of Lieff Cabraser Staff Attorneys in *State Street*

- Roughly 37% of Lieff Cabraser's total Staff Attorney lodestar and hours can be attributed to researching and creating issue-specific memoranda (with hyperlinks to supportive documents from State Street's production) created between April and July 2015.

State Street Document Review Protocol

Field Name/Sub-Type	Issues
CheckBox or Radio Button	Preferential FX Pricing
CheckBox or Radio Button	Best Execution
CheckBox or Radio Button	Custodial fees
CheckBox or Radio Button	Bonus
CheckBox or Radio Button	Disclosure of FX Practice
CheckBox or Radio Button	ERISA Obligations
CheckBox or Radio Button	FX Policies
CheckBox or Radio Button	ERISA Customers
CheckBox or Radio Button	FX Profits/Revenues
CheckBox or Radio Button	Govt Invest
CheckBox or Radio Button	Mkting of Cust/FX Serv
CheckBox or Radio Button	Negotiated FX Pricing
CheckBox or Radio Button	Netting
CheckBox or Radio Button	SI Costs
CheckBox or Radio Button	SI FX Pricing
CheckBox or Radio Button	Spreads – Neg – SI
CheckBox or Radio Button	Welcome Pkge
CheckBox or Radio Button	Public Pension Funds
CheckBox or Radio Button	Non-Pension Customers
CheckBox or Radio Button	Damages
Field Name/Sub-Type	**Document Types**
CheckBox or Radio Button	Articles/FX Comments
CheckBox or Radio Button	Cust Agr
CheckBox or Radio Button	Cust FX Inquiries
CheckBox or Radio Button	IM Guides
CheckBox or Radio Button	Org Chart
CheckBox or Radio Button	RFP/RFI Response
CheckBox or Radio Button	Data Files
CheckBox or Radio Button	Presentations

State Street Document Review Protocol (cont'd)

Field Name/Sub-Type	Issues
Field Name/Sub-Type	**Rating**
CheckBox or Radio Button	Hot
CheckBox or Radio Button	Highly Relevant
CheckBox or Radio Button	Relevant
CheckBox or Radio Button	Irrelevant
CheckBox or Radio Button	Dupe
CheckBox or Radio Button	Contra
Field Name/Sub-Type	**Document Problems**
CheckBox or Radio Button	Redacted
CheckBox or Radio Button	Other Viewing Problem
CheckBox or Radio Button	Foreign Language
CheckBox or Radio Button	Follow-Up
CheckBox or Radio Button	Incomplete
CheckBox or Radio Button	Get Native
Field Name/Sub-Type	**Key Witnesses**
Text Box	
Field Name/Sub-Type	**Attorney Notes**
Text Box	

State Street Document Review Protocol

Document Review Coding Fields Quick Reference Guide

Issue Code	Description
Articles/FX Comments	Please use this issue code to identify articles or industry reports or commentary, both internal and external to State Street, regarding FX transactions generally and State Street's FX services specifically.
Preferential FX Pricing	Certain State Street custodial clients may have been preferred customers and thus able to negotiate more favorable FX trading terms not offered to State Street's general custodial public. Please use this issue code to identify documents that evidence, even in general terms, any such preferential arrangement and indicate in attorney notes the name of the preferred client..
Best Execution	State Street promised their customers "best execution" which was understood to mean that State Street would obtain the best possible FX price in any FX transaction for their customers. State Street now contends that such an understanding is not consistent with their internal understanding of the term "best execution." This issue code is therefore important and should be used to identify documents where "best execution" is mentioned and especially any client communications where State Street promises to obtain "best execution" as well as documents where the term is generally discussed, described or in any way defined.
Custodial fees	Please use this issue code to identify documents addressing annual "flat" fees for custodial services or fees for "ancillary" services.
Bonus	Please use this issue code to identify documents that address, discuss or otherwise concern the fact that State Street employee bonuses are tied to profits obtained through the provision of FX services.
Cust Agr	Please use this issue code to identify custodial agreements between State Street and its customers. Please also identify the customer in the Attorney Notes section of documents tagged with this issue code.
Customer FX Inquiries	Please use this issue code to identify documents, particularly correspondence, between State Street and its customers regarding inquiries into State Street's FX services. In other words, documents that address, discuss or otherwise concern customer inquiries related to State Street's FX services. Please also identify the name of the customer either making or related to the inquiry at issue in the Attorney Notes section of documents tagged with this issue code.

State Street Document Review Protocol

Document Review Coding Fields Quick Reference Guide (cont'd)

Issue Code	Description
Disclosure of FX Practice	Please use this issue code to identify documents that disclose or appear to purport to disclose to customers how State Street processes or will process FX trades.
FX Policies	Please use this issue code to identify internal State Street FX policy documents or descriptions as well as documents that address or in any way concern State Street's internal FX policies.
ERISA Customers	Please use this issue code to flag documents relating specifically to ERISA fund customers
FX Profits/Revenues	Please use this issue code to describe State Street FX profit/revenue charts or spreadsheets as well as documents that address or in any way concern profits/revenues earned by State Street from FX services.
Govt Invest	Please use this issue code to identify documents that concern government investigation into State Street, particularly investigation related to its FX services.
IM Guides	Investment Manager Guides that were distributed to IM's for various custodial clients typically included representations about State Street's FX services along the lines of FX trades being "based on market rates at the time of execution," etc. Please use this issue code to identify all such IM Guides.
Mkting of Cust/FX Serv	Please use this issue code to identify State Street marketing materials or similar documents that discuss or otherwise concern State Street's marketing of its FX services.
Negotiated FX Pricing	Please use this issue code to identify documents that discuss or in any way concern pricing offered by State Street for its negotiated or direct FX transactions.
Netting	Refers to a process State Street claims to have followed whereby buys and sells for all of their custodial clients were "netted" each day in order to obtain "best pricing" for their clients. Evidence appears to indicate they didn't really do this, at least not in the manner they claim.
Org Chart	Please use this issue code to identify internal State Street organizational charts or documents that discuss or otherwise concern the internal organizational structure of State Street, particularly as it relates to FX services.
RFP/RFI Response	State Street would often make representations about its FX services in RFP/RFI responses. Please use this issue code to identify responses or references to responses by State Street to any Requests for Proposal or Requests for Information submitted by any current or potential custodial clients. Please also identify the client that submitted the RFP/RFI in the Attorney Notes section of any documents tagged with this issue code.

State Street Document Review Protocol

Document Review Coding Fields Quick Reference Guide (cont'd)

Issue Code	Description
SI Costs	Certain State Street custodial clients utilized standing instructions for FX trades. Please use this issue code to identify documents that evidence costs incurred by customers using standing instructions and/or costs incurred by State Street for standing instruction services.
SI FX Pricing	Please use this issue code to identify any documents that discuss or in any way concern pricing offered by State Street for its SI (standing instruction) or indirect FX transactions.
Spreads – Neg – SI	Spreads for those FX trades governed by standing instructions (indirect trades) were typically higher than spreads for negotiated FX trades (direct trades). Please use this issue code to identify documents that concern, even generally, the difference in the amount of profit State Street earned on FX trades subject to standing instructions vs. negotiated FX trades.
Welcome Pkge	Please use this issue code to identify State Street documents, either internal or for distribution to its current or potential clients, that provides a description of its FX services, i.e., this is who we are and what we do.
Public Pension Funds	Please use this issue code to flag documents relating specifically to Public Pension fund customers
Non-Pension Customers	Please use this issue code to flag documents relating specifically to any non-pension customers, such as investment banks.

We'll also want boxes people can check indicating problems with the documents, such as "Redacted," "Other Viewing Problem," "Foreign Language" or "Follow-Up."

Hourly Rates Applied to Lieff Cabraser Staff Attorneys in *State Street*

- The hourly rates applied to Lieff Cabraser staff attorneys in *State Street*, as reported to the Court with the firm's fee application, were the current billing rates applicable at the time of the fee application in 2016, except for personnel no longer employed by the firm, in which case the hourly rate of that person in his or her final year of employment was applied.
- Of the 18 Lieff Cabraser staff attorneys who worked on *State Street*, the 2016 rate for 15 of them was $415 per hour. That was the billable rate of Lieff Cabraser's fourth year associates.
- Of the 18 Lieff Cabraser staff attorneys who worked on *State Street*, the 2016 rate for 3 of them was $515 per hour. That was the same rate applicable to attorneys in our class of 2008.

Coordination of Staff Attorneys With Labaton and Thornton Firms

- By January 2015, more than half of the documents produced by State Street remained to be coded.
- Global settlement in BNYM FX for $714 million and the attendant publicity it created made for an inflection point in the State Street mediation, wherein the parties needed to push forward and prepare to proceed quickly to class certification discovery and depositions should resolution not be achieved. The parties agreed that mediation should/would not extend past mid-2015.
- Class counsel ramped up their document review accordingly in order to prepare detailed liability memos and to receive new documents.

Coordination of Staff Attorneys With Labaton and Thornton Firms (cont'd)

- Lieff Cabraser agreed to share or host up to 6 staff attorneys that were partially or fully paid for by Thornton between February and June 2015. This arrangement was made due to Thornton's limited physical facilities, so that Thornton could bear a roughly equal share of the cost of document review.
- Four of these staff attorneys (Andrew McClelland, Virginia Weiss, Christopher Jordan, and Jonathan Zaul) worked for both Lieff Cabraser and Thornton in 2015. All four of these attorneys had worked extensively for Lieff Cabraser before, including in BNYM, and three of them are still working with us.
- Two of these staff attorneys (Ann Ten Eyck and Rachel Wintterle) were hired by Lieff Cabraser through an agency, which was paid directly by Thornton, and did not have a prior relationship with Lieff Cabraser.

Lieff Cabraser's Hourly Duplication Mistake Explained

- Of the four staff attorneys who split time between Lieff Cabraser and Thornton, two of them (McClelland and Weiss) did not show duplicative time in class counsel's reports. In other words, their reported hours—for both Lieff Cabraser and Thornton—were correct.
- Two others (Jordan and Zaul) did have time that was inadvertently duplicated in Lieff Cabraser's and Thornton's reports. This was because the time they spent reviewing documents assigned to Thornton folders from 2/9/15 – 4/14/15 was mistakenly not removed from Lieff Cabraser's timekeeping records after our Accounting Department invoiced and received payment for those hours from Thornton.
- This was an inadvertent bookkeeping error.

Lieff Cabraser's Hourly Duplication Mistake Explained (cont'd)

- The two other staff attorneys (Ten Eyck and Wintterle) whose time was incorrectly included in Lieff Cabraser's lodestar report were hired by an agency that was paid directly by Thornton. Accordingly, they should not have been entering any work/time summaries into our system.
- However, they did so throughout the three to four months they worked at Lieff Cabraser (March – June 2015), by emailing their time summaries directly to our Word Processing department (consistent with typical staff attorney practice), unbeknownst to the attorneys and staff overseeing the case. This was an inadvertent oversight in their training in San Francisco.

Lieff Cabraser's Hourly Duplication Mistake Explained (cont'd)

- To review, there were no hourly duplication errors for 16 staff attorneys listed in Lieff Cabraser's initial lodestar declaration with the Court. The inadvertent duplication errors were limited to 4 staff attorneys, as described above.
- The corrections to Lieff Cabraser's lodestar reports result in 1,761.8 fewer attorney hours than initially reported, for a new attorney/staff total of 18,696.70 hours for Lieff Cabraser (not including timekeepers who worked less than 5 hours).
- This equates to an 8.6% inadvertent initial overstatement of hours for Lieff Cabraser.

Lieff Cabraser's Fee and Corrected Lodestar

- Lieff Cabraser's share of the awarded attorney's fee was $15,116,965.50.
- Using Lieff Cabraser's corrected lodestar total of $8,932,070.50 (applying 2016 rates), the corrected lodestar multiplier for Lieff Cabraser is ***1.69***.
- This is ***less*** than the 1.8 multiplier the Court initially approved on November 2, 2016, and is at the low end of lodestar multipliers typically approved in the context of a lodestar cross-check, particularly in the First Circuit.

Hourly Rates of Lieff Cabraser Staff Attorneys Paid By Clients

- Although Lieff Cabraser is normally compensated for legal services on a contingent fee basis, the firm does occasionally represent plaintiffs on an hourly basis. In the following examples, the firm was paid staff attorney applicable hourly rates.

Hourly Rates of Lieff Cabraser Staff Attorneys Paid By Clients

- In [redacted], paid the firm monthly, including nearly 5,000 hours of staff attorney-document review time, at hourly rates ranging from $375 to $435 per hour, in 2015, for a total of over $1.8 million (or, 52% of the total fees paid in the case, $3,437,310).

Hourly Rates of Lieff Cabraser Staff Attorneys Paid By Clients (cont'd)

- In [redacted] paid us monthly, including for three staff attorneys who conducted document review and analysis. Between February and July 2012, those three LCHB staff attorneys were billed out and paid at rates between $375 and $460 per hour.

Hourly Rates of Lieff Cabraser Staff Attorneys Paid By Clients (cont'd)

- In [redacted]. That assignment in 2014 and 2015 was undertaken on an hourly basis and we were paid $400 per hour for the time of two staff attorneys who performed document review and analysis for the client (and who also worked extensively on *State Street*).

Hourly Rates of Lieff Cabraser Staff Attorneys Paid By Clients (cont'd)

- In [redacted] two Merrill Lynch mutual funds, paid the firm on an hourly basis, including the hourly rates of two staff attorneys for document review and analysis at rates between $275 and $315 per hour in 2003.

Lieff Cabraser Staff Attorneys' Hourly Rates Are Routinely Included and Approved in Class Action Fee Awards

- Most fee awards in the firm's class action cases have been awarded on a percentage of the recovery basis. However, 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 lodestar cross-check and lodestar fee award contexts, Lieff Cabraser staff attorneys' hourly rates are routinely included and approved in class action fee awards. Below are some recent examples:

Lieff Cabraser Staff Attorneys' Hourly Rates Are Routinely Included and Approved in Class Action Fee Awards (cont'd)

- *In re New York Mellon Corp. Forex Transactions Litigation*, 12-md-2335 LAK (S.D.N.Y.) – Over 28,000 hours of staff attorney time at roughly the same hourly rates applied in *State Street* 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:

Lieff Cabraser Staff Attorneys' Hourly Rates Are Routinely Included and Approved in Class Action Fee Awards (cont'd)

"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."

In re Bank of New York Mellon Corp. Forex Transactions Litigation, No. 12-MD-2335 (LAK), S.D.N.Y.

Lieff Cabraser Staff Attorneys' Hourly Rates Are Routinely Included and Approved in Class Action Fee Awards (cont'd)

- Staff Attorney lodestar constituted approximately 45% of the total lodestar recorded in the BNYM litigation, across all firms.
- By comparison, Staff Attorney lodestar constituted just over 50% of the total lodestar recorded in the State Street litigation.

Lieff Cabraser Staff Attorneys' Hourly Rates Are Routinely Included and Approved in Class Action Fee Awards (cont'd)

- *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 Lieff Cabraser 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." In *BP Solar*, specifically, Judge Illston's lodestar cross-check included two Lieff Cabraser staff attorneys billed at $415 per hour, the same as most of the staff attorneys in *State Street*.

Lieff Cabraser Staff Attorneys' Hourly Rates Are Routinely Included and Approved in Class Action Fee Awards (cont'd)

- *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 ordered Lieff Cabraser and their 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 Lieff Cabraser], 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.

Lieff Cabraser Staff Attorneys' Hourly Rates Are Routinely Included and Approved in Class Action Fee Awards (cont'd)

- 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.)
- In this case, Lieff Cabraser's lodestar submission included a number of staff attorneys whose hourly rates are consistent with the rates submitted in *State Street* a year later.

Lieff Cabraser Staff Attorneys' Hourly Rates Are Routinely Included and Approved in Class Action Fee Awards (cont'd)

- *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 Lieff Cabraser and their co-lead counsel "and confirmed" the fee by a lodestar cross-check. Included in Lieff Cabraser'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.

EXHIBIT B

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 JULY 10, 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 July 10, 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. 10:

Describe the frequency and nature of communications with the Plaintiffs' Law Firms over the course of the Litigation. Please specify the attorneys with whom you dealt.

RESPONSE TO INTERROGATORY NO. 10:

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. Subject to and without waiving those objections, LCHB responds as follows:

Daniel Chiplock was the principal attorney on the Litigation for LCHB. Mr. Chiplock was in regular contact with attorneys at Labaton and Thornton throughout the life of the case. These communications were predominantly by email and averaged several per week, with increased frequency (at times numerous emails per day) around mediation dates, hearings, and filing deadlines. Counsel at Plaintiffs' Law Firms also spoke by phone, with somewhat lesser frequency. Counsel also had a number of in-person conferences and strategy sessions amongst themselves, separate from the approximately 15 mediation sessions. Mr. Chiplock chiefly

communicated with Lawrence Sucharow, David Goldsmith, and Michael Rogers at Labaton; and Michael Thornton, Garrett Bradley, Michael Lesser, and Evan Hoffman at Thornton. Robert L. Lieff of LCHB participated in most if not all of the in-person conferences and mediation sessions, as well as many of the group telephone calls, but had less involvement in the day-to-day email communications between and among Plaintiffs' Law Firms.

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

INTERROGATORY NO. 11:

Describe the role of the U.S. Department of Labor, including any field divisions or offices, the U.S. Attorney's Office, the U.S. Department of Justice, and/or the U.S. Securities and Exchange Commission, in the SST Litigation.

RESPONSE TO INTERROGATORY NO. 11:

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. Subject to and without waiving those objections, LCHB responds as follows:

No government agency or department played a role in the investigation or filing of the claims asserted by Plaintiffs' Law Firms in the SST Litigation. Nor did any government agency or department participate in the briefing of State Street's motion to dismiss the claims asserted in the SST Litigation, in any discovery or document review in the Litigation, or in any of the numerous mediation sessions or calls with counsel for State Street in the SST Litigation, save for the final mediation session (which the U.S. Department of Labor ("DOL") attended, seated in a separate conference room). During the life of the SST Litigation, Mr. Chiplock recalls just one

or two in-person meetings with staff from the U.S. Attorney's Office in Boston (who never directly participated in the SST Litigation, including any mediation session), and perhaps several brief phone calls with attorneys from that office. Mr. Chiplock does not recall having any direct contact with the U.S. Securities and Exchange Commission (the "SEC") concerning the SST Litigation. Attorneys from Labaton or Thornton may have communicated with the SEC by telephone a small number of times. Over the course of the mediation in the SST Litigation, State Street's counsel did report the fact that State Street was separately negotiating with the SEC.

The DOL, for its part, did not take an active role in the litigation or negotiation of a settlement in principle in the SST Litigation, apart from its presence (in a separate conference room) at the final mediation session in late June 2015. The DOL became more engaged with Plaintiffs' Law Firms, and in the process of finalizing the settlement, after the settlement in principle had been reached in late June 2015. After that date, Plaintiffs' Law Firms, State Street, and the DOL discussed and negotiated a plan of allocation of the proceeds from the SST Litigation that would satisfy the DOL's desire to see that ERISA plan-customers of State Street were fairly compensated (in the DOL's view) as part of any global civil resolution of claims either asserted or contemplated against State Street. The DOL continued to communicate with both State Street and Plaintiffs' Law Firms after the formal stipulation of settlement was signed in order to further fine-tune the settlement plan of allocation, in particular the manner in which Group Trusts were to be handled as part of the settlement claims process.

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

INTERROGATORY NO. 13:

Describe the frequency and nature of communications with ERISA counsel over the course of the Litigation. Please specify the attorneys with whom you dealt.

RESPONSE TO INTERROGATORY NO. 13:

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. Subject to and without waiving those objections, LCHB responds as follows:

Communications with ERISA counsel throughout the SST Litigation were far less frequent than they were with counsel from the other Plaintiffs' Law Firms, particularly prior to 2013. Once ERISA counsel were fully involved and engaged with the mediation process in the SST Litigation, communications (primarily by email, but also by telephone) were more frequent, though still less common than those between and among the Plaintiffs' Law Firms, and tended to focus predominantly on issues, strategy, and logistics surrounding the mediation sessions themselves. After the agreement in principle to resolve the SST Litigation was reached, the Firm's contacts with ERISA counsel principally related to the settlement's plan of allocation and satisfying the concerns of the DOL. The principal ERISA counsel with whom LCHB dealt were Lynn Sarko (of Keller Rohrback LLP) and Carl Kravitz (of Zuckerman Spaeder LLP). Brian McTigue of McTigue Law LLP also attended most mediation sessions, was copied on group emails as a general matter, and attended some plaintiffs-only calls, but did not contribute in the manner that Messrs. Sarko and Kravitz did with respect to global mediation strategy and liaising with the DOL on issues of concern to the DOL.

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

INTERROGATORY NO. 14:

Explain the Law Firm's litigation strategy in pursuing the claims raised in the SST Litigation, including the strategy employed in mediation. Identify and describe all events that impacted or caused the Firm to change that strategy.

RESPONSE TO INTERROGATORY NO. 14:

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. Subject to and without waiving those objections, LCHB responds as follows:

LCHB's chief litigation strategy was to pursue claims that afforded the broadest possible relief to the affected proposed class, and which stood the greatest chance of being certified for class treatment. Together with co-counsel, we accordingly researched and drafted claims (such as M.G.L. Ch. 93A ("Chapter 93A") and breach of fiduciary duty) that satisfied these aims. One of LCHB's chief contributions to the litigation was introducing the concept of pleading Chapter 93A claims in the complaints, as well as drafting the sections of the opposition to State Street's motion to dismiss addressing those particular claims. Throughout the mediation, LCHB also gave presentations to the mediator, co-counsel, and State Street concerning the strengths of Plaintiff's Chapter 93A claims, in particular, and their likelihood of being certified. Together with co-counsel, LCHB pushed for State Street's production of documents to be reviewed during the mediation so that active and informed litigation could resume promptly should the mediation

be terminated. LCHB in particular promoted and pushed for the production of the *Hill* documents, which was at first strongly resisted by State Street.

Plaintiffs' Law Firms reviewed the documents produced by State Street, and also requested and received numerical data from State Street including FX trading volumes divided into different categories or "buckets" of State Street customers (such as public pension funds, ERISA plans, and registered investment companies ("RICs")) throughout the alleged class period, in addition to effective "spreads" that State Street charged on different types of FX trades (such as automatic income repatriation (or "AIR") and securities settlement trades (known as "SSH")).

In early 2015, fact discovery in a closely-analogous FX lawsuit against State Street's principal custodial competitor, BNY Mellon, came to a close. This freed the time of roughly a dozen experienced Staff Attorneys at LCHB who had spent roughly 2 years (and over 2,200 hours, on average) developing expertise in custodial FX issues. These Staff Attorneys were immediately put to work helping to complete the document review in the SST Litigation. The BNY Mellon litigation settled shortly thereafter, for $335 million (specifically attributed to the private class litigation) and $504 million in total recovery for BNY Mellon customers (which included settlements with the New York Attorney General and the DOL). The settlement of the BNY Mellon litigation, which had been closely watched by State Street, created additional urgency to see whether the mediation in the SST Litigation would finally result in a resolution of acceptable value to the proposed class of State Street customers, or whether the parties needed to terminate the mediation (which had already been extended several times) and proceed to the next phase of discovery (including depositions and possible third party subpoenas). The parties sought a modest extension of time to roughly April 2015 continue mediating. Given the

intensification of discussions, the parties continued mediating slightly beyond that date and reached an agreement in principle (contingent on State Street's resolution of potential claims by the DOJ and SEC) by the end of June 2015.

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

INTERROGATORY NO. 15:

Explain any tensions and/or adversarial positions assumed between the ERISA counsel, on the one hand, and the Plaintiffs' Law Firms, on the other, including differences in litigation strategy, legal theories, damages, and/or theories of liability asserted during the SST Litigation.

RESPONSE TO INTERROGATORY NO. 15:

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. Subject to and without waiving those objections, LCHB responds as follows:

LCHB can recall no actual "adversarial positions" assumed between Plaintiffs' Law Firms and ERISA counsel during the SST Litigation, and by at least 2014 (continuing through 2015) can recall a healthy working relationship with Messrs. Sarko and Kravitz, in particular, in devising and implementing a global mediation and possible settlement strategy. Mr. Chiplock can recall being concerned after the ARTRS action had successfully overcome a motion to dismiss, and before the ERISA actions had been tested by a motion to dismiss, that ERISA potentially could be held to pre-empt non-ERISA claims that otherwise may have benefited ERISA clients, and that the mere presence of ERISA claims (even for a relatively small

percentage of the affected class) could be used as an argument by State Street to divide the class and reduce the class' overall recovery irrespective of the success of Plaintiff's Chapter 93A and common law claims up to that point. In the early days of the mediation (late 2012 and possibly into 2013), there may have been some concern whether the overarching and first-filed class suit brought by the Plaintiffs' Law Firms was in conflict with the later-filed ERISA actions (which of necessity only could benefit a relatively small percentage of the affected class) for this reason. Before much time had passed, however, and certainly for the bulk of the life-span of the mediation, Plaintiffs' Law Firms and ERISA counsel (particularly Messrs. Sarko and Kravitz) were jointly attending the same mediation sessions with the mediator (Jonathan Marks) and strategizing together over common liability issues as well as how to try to achieve a global resolution that would satisfy all interested parties, including the DOL.

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

INTERROGATORY NO. 16:

Explain how the adversarial positions described above impacted or did not impact the Law Firm's strategy, including its discovery, mediation, and/or the settlement of the SST Litigation.

RESPONSE TO INTERROGATORY NO. 16:

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

The Firm's overall strategy, along with that of the other Plaintiffs' Law Firms, remained constant throughout the SST Litigation, which was to maximize the recovery to the class as a whole while taking into account the risk of litigation and the eventual possibility of an adverse judgment or denial of class certification. By the time the agreement in principle was reached to settle the SST Litigation, the Firm was prepared to accept (as was similarly accepted in the BNY Mellon settlement) that ERISA plans who were members of the class justifiably could be afforded a slight premium in their shares of the overall recovery given the separate litigation threat posed by the DOL and the potentially greater ease with which ERISA claims could be certified for class treatment (assuming such claims got past a motion to dismiss, which never technically happened in either the SST Litigation or in BNY Mellon). Accordingly, the Firm participated in discussions with Plaintiffs' Law Firms, ERISA counsel, and the DOL to construct the settlement plan of allocation in a manner that would afford participating ERISA plans a modest premium in their recoveries.

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

INTERROGATORY NO. 24:

Please list the full name of each Staff Attorney who worked on the SST Litigation/ Document Review. Please include for each Staff Attorney: his/her employment classification (full-time/part-time employee or independent contractor); how long he or she worked (has worked) at the Firm; the name/description of any other cases to which he or she was assigned during the pendency of SST Litigation/Document Review; whether he/she was allocated to Thornton for any portion of the SST Litigation; any prior experience in securities class action

litigations, foreign-exchange trading and/or mismanagement of custodial funds; the physical location where the work was performed; and the hourly rate charged in the Fee Petition.

RESPONSE TO INTERROGATORY NO. 24:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is burdensome and duplicative of other discovery directed to LCHB, including document requests. Most of the information sought by this Interrogatory can be found in LCHB's document productions. Subject to and without waiving those objections, LCHB responds as follows:

The LCHB Staff Attorneys who worked on the SST Litigation/Document Review were Tanya Ashur, Joshua Bloomfield, Elizabeth Brehm, Jade Butman, James Gilyard, Kelly Gralewski, Christopher Jordan, Jason Kim, James Leggett, Colleen Liebmann, Andrew McClelland, Scott Miloro, Leah Nutting, Marissa Oh (Lackey), Peter Roos, Ryan Sturtevant, Virginia Weiss, and Jonathan Zaul. The hourly rate listed in the Fee Petition for all of these Staff Attorneys was $415, except for Joshua Bloomfield, Jade Butman, and Marissa Oh, whose listed hourly rate was $515.

Two other Staff Attorneys – Rachel Wintterle and Ann Ten Eyck – worked in LCHB's San Francisco offices alongside LCHB Staff Attorneys, were supervised in the same manner, and were assigned similar work as the other Staff Attorneys, but were contracted and paid for by Thornton through an outside agency, and thus are not included in the definition of "LCHB Staff Attorneys" for this Response. They were inadvertently and erroneously included in LCHB's lodestar calculation for reasons previously and elsewhere explained in these Responses.

The following LCHB Staff Attorneys were payroll employees paid directly by LCHB for the duration of the SST Litigation: Tanya Ashur, Elizabeth Brehm, James Gilyard, Kelly

Gralewski, Jason Kim, Christopher Jordan, Coleen Liebmann, Scott Miloro, Marissa Oh, Peter Roos, and Jonathan Zaul.

The following LCHB Staff Attorneys were payroll employees paid through an outside agency for the duration of the SST Litigation: Jade Butman (24 hours total), Andrew McClelland (58 hours total), and Virginia Weiss (473.50 hours total).

The following Staff Attorneys were, at different times during the SST Litigation, either paid directly by LCHB or paid through an outside agency, as follows:

Joshua Bloomfield: Paid via agency in 2013, paid directly by LCHB in 2015.

Leah Nutting: Paid via agency in 2013, paid directly by LCHB in 2015.

James Leggett: Paid via agency from 1/21/15—1/25/15, paid directly by LCHB as of 1/26/15.

Ryan Sturtevant: Paid via agency from 1/20/15—1/27/15, paid directly by LCHB as of 1/28/15.

The LCHB Staff Attorneys who did at least some work allocated to Thornton during the life of the SST Litigation were Chris Jordan, Andrew McClelland, Virginia Weiss, and Jonathan Zaul.

The following LCHB Staff Attorneys physically worked on the SST Litigation/Document Review in LCHB's San Francisco offices: Tanya Ashur, Jade Butman, James Gilyard, Jason Kim, James Leggett, Coleen Liebmann, Andrew McClelland, Marissa Oh, Peter Roos, and Ryan Sturtevant.

Scott Miloro physically worked in LCHB's New York offices.

The following LCHB Staff Attorneys worked remotely on the SST Litigation/Document Review (remote work locations are in parentheses): Joshua Bloomfield (San Francisco, CA),

Elizabeth Brehm (Shoreham, NY), Kelly Gralewski (San Diego, CA), Chris Jordan (Houston, TX and Atlanta, GA), Leah Nutting (San Francisco, CA), Virginia Weiss (Rochester, MN and Sacramento/Roseville, CA), and Jonathan Zaul (San Francisco, CA).

The following LCHB Staff Attorneys are still employed by or performing work for LCHB (total number of years worked for LCHB, with any gaps in employment excluded, are indicated in parentheses): Tanya Ashur (3.5 years), Kelly Gralewski (8.5 years), Chris Jordan (4.5 years), Jason Kim (5.5 years), James Leggett (3.5 years), Coleen Liebmann (2.5 years), Scott Miloro (5.5 years), Leah Nutting (4.5 years), Marissa Oh (3.5 years), Peter Roos (4.5 years), Ryan Sturtevant (3 years), Virginia Weiss (2.5 years), and Jonathan Zaul (4.5 years).

The following LCHB Staff Attorneys are no longer employed by or performing work for LCHB (number of years at LCHB is indicated in parentheses): Joshua Bloomfield (2 years), Elizabeth Brehm (2 years), Jade Butman (1 year), James Gilyard (2.5 years), and Andrew McClelland (1.5 years).

The following LCHB Staff Attorneys worked at least part-time on the SST Litigation/Document Review in 2013-2014, with any other LCHB cases to which they were assigned during that time-period indicated in parentheses: Joshua Bloomfield (BNY Mellon, British Airways Fuel Surcharge); Elizabeth Brehm; Kelly Gralewski (BNY Mellon, Microsoft-Canada, Florida Tobacco); Scott Miloro (BNY Mellon, Copytele, Siskin Patent, ING Direct Flat Fee, Multaq Qui Tam, Takata, Merck/Vioxx Securities Litigation, NYSCRF-Pratcher); and Leah Nutting (BNY Mellon).[1]

[1] For purposes of this Response, "BNY Mellon" refers to *In re Bank of New York Mellon Corp. Foreign Exchange Transactions Litigation*, MDL No. 2335 (LAK) (S.D.N.Y.); "British Airways Fuel Surcharge" refers to *Dover v. British Airways*, Case No. 1:12-cv-05567 (E.D.N.Y.); "Microsoft-Canada" refers to *Pro-Sys Consultants and Neil Godfrey v. Microsoft Corporation and Microsoft Canada Co./Microsoft Canada CIE*, Case No. LO43175 (Vancouver Registry); "Florida Tobacco" refers to *In re Engle Cases*, No. 3:09-cv-10000-J-32 JBT (M.D. Fl.); "Copytele" refers to *In the Matter of the Arbitration between CopyTele and AU Optronics*, Case No. 50 117 T

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The following LCHB Staff Attorneys worked on the SST Litigation/Document Review from January through June 2015, with any other LCHB cases on which they performed work (even if only a handful of hours) during that time-period indicated in parentheses: Tanya Ashur (BNY Mellon), Joshua Bloomfield (British Airways Fuel Surcharge), Elizabeth Brehm, James Gilyard (BNY Mellon), Chris Jordan (BNY Mellon), Jason Kim (BNY Mellon), James Leggett (BNY Mellon), Coleen Liebmann (Hong Leong Finance Limited, Merck/Vioxx Securities Litigation, Schwab), Scott Miloro (BNY Mellon, Multaq Qui Tam, Takata, Merck/Vioxx), Leah Nutting (BNY Mellon), Marissa Oh (BNY Mellon), Peter Roos (Nike Copyright, Apple Unlimited 3G, Benicar, Takata, Celera, Schwab), Ryan Sturtevant (Celera, Hong Leong Finance, Schwab), Virginia Weiss (BNY Mellon), and Jonathan Zaul (BNY Mellon, Photographer Copyright Class Actions).

The following Staff Attorneys put in more limited hours in 2015 on the SST Litigation/Document Review, with any other LCHB cases on which they performed work during that time-period indicated in parentheses: Jade Butman (Hong Leong Finance Limited,

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009883 13 (Internat'l Centre for Dispute Resolution); "ING Direct Flat Fee" refers to *ING Bank Rate Renew Cases*, Case No. 11-154-LPS (D. Del.); "Multaq Qui Tam" refers to *U.S. ex rel. Abbate v. Sanofi-Aventis, et al.*, Case No. 2 :15-cv-01510-SRC (D. N.J.); "Takata" refers to *In re Takata Airbag Litigation*, MDL No. 2599 (S.D. Fl.); "Merck/Vioxx Securities Litigation" refers collectively to *Honeywell International Inc. Defined Contribution Plans Master Savings Trust. v. Merck & Co.*, No. 14-cv 2523-SRC-CLW (S.D.N.Y.), *Janus Balanced Fund v. Merck & Co.*, No. 14-cv-3019-SRC-CLW (S.D.N.Y.), *Lord Abbett Affiliated Fund v. Merck & Co.*, No. 14-cv-2027-SRC-CLW (S.D.N.Y.), and *Nuveen Dividend Value Fund (f/k/a Nuveen Equity Income Fund), on its own behalf and as successor in interest to Nuveen Large Cap Value Fund (f/k/a First American Large Cap Value Fund) v. Merck & Co.*, No. 14-cv-1709-SRC-CLW (S.D.N.Y.); "NYSCRF-Pratcher" refers to *Richardson v. Pratcher*, No. 12-cv-08451-JGK (S.D.N.Y.); "Hong Leong Finance Limited" refers to *Hong Leong Finance Limited (Singapore) v. Morgan Stanley, et al.*, No. 653894/2013 (Sup. Ct. N.Y.); "Nike Copyright" refers to *Rentmeester v. Nike, Inc.*, D.C. No. 3:15-cv-00113-MO (D. Or.); "Apple Unlimited 3G" refers to *In Re Apple and AT&T iPad Unlimited Data Plan Litigation*, No. 5:10-cv-02553 RMW (N.D. Ca.); "Benicar" refers to *Benicar Litigation*, MDL No. 2606 (D. N.J.); "Celera" refers to *Biotechnology Value Fund, L.P. v. Celera Corp.*, 3:13-cv-03248-WHA (N.D. Cal.); "Schwab" refers collectively to *The Charles Schwab Corp. v. BNP Paribas Sec. Corp.*, No. CGC-10-501610 (Cal. Super. Ct.); *The Charles Schwab Corp. v. J.P. Morgan Sec., Inc.*, No. CGC-10-503206 (Cal. Super. Ct.); *The Charles Schwab Corp. v. J.P. Morgan Sec., Inc.*, No. CGC-10-503207 (Cal. Super. Ct.); and *The Charles Schwab Corp. v. Banc of America Sec. LLC*, No. CGC-10-501151 (Cal. Super. Ct.); and "Photographer Copyright Class Actions" refers to *Dennis Kunkel Microscopy, Inc. et al. v. John Wiley & Sons, Inc.*, C.A. No. 15-00094 (JLL) (JAD) (D. N.J.). "Siskin Patent" was a possible patent infringement investigation that did not result in a filed case.

Merck/Vioxx Securities Litigation, Schwab), Elizabeth Brehm, and Andrew McClelland (BNY Mellon).

The majority of LCHB's Staff Attorneys had substantial experience working on cases involving foreign-exchange trading and mismanagement of custodial funds by virtue of their work on the BNY Mellon litigation. The number of hours worked by each of the following Staff Attorneys in the BNY Mellon litigation, as recorded in the fee petition submitted by LCHB in that litigation (and previously produced to the Special Master), is indicated in parentheses: Tanya Ashur (2,414.50 hours), Joshua Bloomfield (2,183.00 hours), James Gilyard (2,614.50 hours), Kelly Gralewski (301.50 hours), Christopher Jordan (1,572.90 hours), Jason Kim (2,659.00 hours), James Leggett (2,476.20 hours), Andrew McClelland (1,799.00 hours), Scott Miloro (3,146.80 hours), Leah Nutting (3,128.40 hours), Marissa Oh (Lackey) (2,575.70 hours), Virginia Weiss (1,445.80 hours), and Jonathan Zaul (2,197.90 hours).

Of the few LCHB Staff Attorneys who did not work on the BNY Mellon litigation, Jade Butman, Coleen Liebmann, Peter Roos, and Ryan Sturtevant otherwise had experience working on securities/financial fraud matters at the Firm, including the Hong Leong Finance Limited, Merck/Vioxx Securities Litigation, Schwab, and Celera matters listed above.[2]

Elizabeth Brehm was the only LCHB Staff Attorney who did not work on any other LCHB cases apart from the SST Litigation. Prior to working for LCHB, however, Ms. Brehm

[2] In the Hong Leong Finance Limited case, LCHB represented a Singaporean bank in a lawsuit against Morgan Stanley to recover losses stemming from a failed complex financial investment product that was created by Morgan Stanley and distributed to the Singaporean bank's clients. In the Merck/Vioxx Securities Litigation, LCHB represented a number of mutual funds managed by major investment advisors against Merck for losses sustained in the clients' holdings of Merck stock stemming from Merck's alleged misrepresentations concerning the safety of the painkiller drug Vioxx. In the Schwab cases, LCHB represented Charles Schwab in four separate individual securities actions against certain issuers and sellers of mortgage-backed securities ("MBS") for materially misrepresenting the quality of the loans underlying the securities in violation of California state law. In Celera, LCHB represented a group of affiliated funds investing in biotechnology companies in a securities fraud action arising from misconduct in connection with Quest Diagnostics Inc.'s 2011 acquisition of Celera Corporation.

specialized in securities/financial fraud and antitrust cases while an associate at another plaintiffs' class action firm (Kirby McInerney LLP).

Daniel P. Chiplock, LCHB Partner, and Steven E. Fineman, LCHB Managing Partner, have knowledge of the information provided in this Response.

INTERROGATORY NO. 25:

For each of the Staff Attorneys listed above, please describe all compensation paid to the Staff Attorney and the total number of hours recorded for work on the SST Litigation/Document Review.

RESPONSE TO INTERROGATORY NO. 25:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is burdensome and duplicative of other discovery directed to LCHB, including document requests. The information sought by this Interrogatory can be found in LCHB's document productions. Subject to and without waiving those objections, LCHB responds as follows:

The hours worked by and compensation paid to the LCHB Staff Attorneys for the SST Litigation are as follows: Tanya Ashur (843.50 hours, $33,740.00), Joshua Bloomfield (2,033.20 hours, $98,328.00), Elizabeth Brehm (1,682.90 hours, $75,747.38), Jade Butman (24.00 hours, $1,194.00), James Gilyard (882.00 hours, $35,280.00), Kelly Gralewski (1,478.90 hours, $67,650.50), Christopher Jordan (539.90 hours, $24,295.50), Jason Kim (904.00 hours, $37,968.00), James Leggett (893.00 hours, $35,810.00), Colleen Liebmann (24.00 hours, $1,008.00), Andrew McClelland (58.00 hours, $3,040.36), Scott Miloro (658.80 hours, $29,855.30), Leah Nutting (1,940.10 hours, $115,861.25), Marissa Oh (Lackey) (800.30 hours, $32,012.00), Peter Roos (780.00 hours, $39,230.00), Ryan Sturtevant (796.00 hours,

$21,307.50), Virginia Weiss (473.50 hours, $21,307.50), and Jonathan Zaul (495.20 hours, $24,760.00).

Daniel P. Chiplock, LCHB Partner, and Steven E. Fineman, LCHB Managing Partner, have knowledge of the information provided in this Response.

INTERROGATORY NO. 31:

Describe the Firm's understanding of how fees, costs and/or expenses associated with performance of discovery in the SST Document Review would be shared among the Firm, the Plaintiffs' Law Firms, and/or the ERISA firms, including but not limited to who would be responsible for; compensating Staff Attorneys for hours worked; hosting Catalyst and/or other electronic database(s); compiling "hot docs" and other documents relative to the liability and/or damages theories; and/or other expenses associated with the SST Document Review.

RESPONSE TO INTERROGATORY NO. 31:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is burdensome and duplicative of other discovery directed to LCHB, including document requests. Most of the information sought by this Interrogatory can be found in LCHB's document productions. Subject to and without waiving those objections, LCHB responds as follows:

The Firm understood throughout the SST Litigation that Plaintiffs' Law Firms would share, as equally as possible, the costs and expenses of litigation, mediation and discovery (including but not limited to maintaining the Catalyst document database). After the ERISA lawsuits were filed and folded into the mediation, the Plaintiffs' Law Firms and ERISA counsel memorialized an agreement whereby 9% of any collective fee award would be paid to ERISA counsel. ERISA counsel thereafter bore roughly 9% of the joint costs of the mediation from that

point on, although to the best of the Firm's recollection ERISA counsel did not share in the cost of maintaining the Catalyst document repository, and did not jointly participate with Plaintiffs' Law Firms in any document review.

LCHB hosted the Catalyst document database, which was chiefly administered by Kirti Dugar in our San Francisco office. Document reviewers employed by all three Plaintiffs' Law Firms jointly shared responsibility for reviewing and coding "hot documents" and analyzing documents relative to the liability and/or damages theories in the SST Litigation. LCHB understood that it was responsible for compensating the bulk of the Staff Attorneys working in its San Francisco office and/or under LCHB's supervision for most of the life of the SST Litigation, with Thornton bearing financial responsibility for a relative small handful of Staff Attorneys strictly during the first half of 2015, as described below.

During at least some portion of the first half of 2015, Thornton paid an outside agency directly for the services of Andrew McClelland, Ann Ten Eyck, Virginia Weiss, and Rachel Wintterle. Each of these attorneys worked physically in LCHB's San Francisco offices, except for Ms. Weiss, who worked remotely.

For roughly a 9-week period between February and April 2015, Thornton paid LCHB directly for the work performed by Staff Attorneys Christopher Jordan and Jonathan Zaul, both of whom worked remotely. For all other time periods, LCHB compensated Messrs. Jordan and Zaul for any work they performed, without reimbursement from Thornton or any other firm.

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

INTERROGATORY NO. 32:

For each of the categories listed above, explain the Firm's understanding of how those fees, costs and/or expenses would be reported to the Court in the event of a successful verdict and/or settlement.

RESPONSE TO INTERROGATORY NO. 32:

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

In the event of a successful verdict or settlement, the Firm's understanding was that the costs and expenses it had advanced during the litigation would be reported and broken out by category as they were in Exhibit B to the Firm's Fee Petition (e.g., Litigation Fund Contribution, Mediation Expenses, etc.). With respect to Staff Attorneys, the Firm's understanding was that for purposes of any lodestar crosscheck, the Plaintiffs' Law Firms would include in their time reports any attorney hours for which they had specifically borne the financial obligation and the accompanying risk of non-payment. In this manner, the same Staff Attorney name could appear on more than one Plaintiffs' Law Firm's time report, since the financial responsibility for those particular Staff Attorneys shifted between firms during the litigation (in 2015 only, at least as far as LCHB is concerned).

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

INTERROGATORY NO. 46:

Please describe any previous matters, whether based on a contingency, hourly, or other fee arrangement, in which the Film engaged in a fee dispute with a client or class representative

prior to the conclusion of the representation. For each such matter, explain how that fee dispute was resolved and any hourly rate/quantum meruit applied for work performed.

RESPONSE TO INTERROGATORY NO. 46:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds this it is vague, overbroad 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:

LCHB can recall no previous matter in which the Firm "engaged" in a "fee dispute" with a client in a litigation, mediation or arbitration context. LCHB can recall no previous class action in which the Firm had a dispute with a client/class representative about LCHB's requested or awarded attorneys' fee. LCHB can recall no "hourly" representation in which the Firm had a dispute with a client about LCHB's attorneys' fees. Though not strictly speaking "fee disputes," in numerous individual contingent fee representations in personal injury/mass tort cases over the Firm's 45 plus years, LCHB has voluntarily reduced its fees (by lowering its contractual contingent percentage of the recovery), either at the unique request of a client, or in order to facilitate a group or "global" settlement.

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

INTERROGATORY NO. 49:

Please list all of the Firm's hourly rates charged to hourly clients for each of the years 2010-2016. For each attorney, please list the relative experience level.

RESPONSE TO INTERROGATORY NO. 49:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is burdensome and duplicative of other discovery directed to LCHB, including document requests. The information sought by this Interrogatory can be found in LCHB's document productions. Subject to and without waiving those objections, LCHB responds by referring the Special Master to LCHB documents, Bates Nos. LCHB-0053423—LCHB-0053479, in addition to LCHB-0053253—LCHB-0053257; LCHB-0053277; LCHB-0053341; LCHB-0053332; LCHB-0053262—LCHB-0053265 and LCHB-0053290.

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

INTERROGATORY NO. 50:

Please list all of the Firm's hourly rates charged to non-hourly clients (whether in class action or other contingency-fee litigation) for each of the years 2010-2016. For each attorney, please list the relative experience level.

RESPONSE TO INTERROGATORY NO. 50:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is burdensome and duplicative of other discovery directed to LCHB, including document requests. The information sought by this Interrogatory can be found in LCHB's document productions. Subject to and without waiving those objections, LCHB responds by referring the Special Master to LCHB documents, Bates Nos. LCHB-0053423—LCHB-0053479.

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

INTERROGATORY NO. 51:

Please list all of the hourly rates charged or associated with any matters in which the Firm has acted as local counsel for each of the years 2010-2016. For each attorney, please list the relative experience level.

RESPONSE TO INTERROGATORY NO. 51:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is burdensome and duplicative of other discovery directed to LCHB, including document requests. The information sought by this Interrogatory can be found in LCHB's document productions. Subject to and without waiving those objections, LCHB responds by referring the Special Master to LCHB documents, Bates Nos. LCHB-0053423—LCHB-0053479.

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

INTERROGATORY NO. 52:

Please identify the Firm's managing partner for each of the years from 2010 to present, and list all members of the Firm's Executive Committee and describe their respective roles in determining annual rates.

RESPONSE TO INTERROGATORY NO. 52:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is burdensome and partly duplicative of other discovery directed to LCHB, including prior Interrogatories. Subject to and without waiving those objections, LCHB responds as follows:

Steven E. Fineman has been the Firm's Managing Partner for the years 2010 to the present. The following current and former LCHB Partners served on the Executive Committee during the years 2010 to the present: Elizabeth J. Cabraser, Richard M. Heimann, William Bernstein (now, Of Counsel), Steven E. Fineman, Joseph R. Saveri (former Partner), Robert J. Nelson, Kelly M. Dermody, Jonathan D. Selbin, Michael W. Sobol, and David S. Stellings. The roles of the Firm's Managing Partner and Executive Committee members in "determining hourly rates" are described in LCHB's Response to Interrogatory No. 47, and in the deposition testimony of Steven E. Fineman.

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

INTERROGATORY NO. 54:

Identify and describe all instances in which the Firm has billed an attorney at a lesser or higher rate than the annual rate determined by the Managing Partner, in conjunction with the Executive Committee, for a particular year and explain why that decision was made.

RESPONSE TO INTERROGATORY NO. 54:

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

LCHB can recall no instance in which the Firm billed an attorney at a higher rate than those set for particular year. In certain hourly rate representations, LCHB agreed to "discount" its customary hourly rates at the client's request (usually a standard 10% discount). Such arrangements are included in LCHB's July 10, 2017 document production. In certain contingent fee agreements with public pension fund clients, the Firm's hourly rates (for lodestar cross check

and multiplier purposes) are set by the fund at rates lower than LCHB's customary hourly rates. As stated elsewhere in its discovery responses, the vast majority of the Firm's compensation comes from contingent fee, percentage of the recovery, agreements and awards unrelated to the Firm's hourly rates.

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

INTERROGATORY NO. 55:

Describe in detail the process for finalizing the term sheet and Final Settlement in the SST Litigation, including the role of the U.S. Department of Labor, U.S. Attorney's Office, U.S. Department of Justice and/or the U.S. Securities and Exchange Commission in the negotiations.

RESPONSE TO INTERROGATORY NO. 55:

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. Subject to and without waiving those objections, LCHB responds as follows:

The SEC, U.S. Department of Justice ("DOJ"), and U.S. Attorney's Office played no role in finalizing the term sheet and Final Settlement in the SST Litigation. Those agencies and departments resolved their own investigations of State Street via separate settlements with State Street, albeit their settlements are contingent on the Settlement in the SST Litigation (including payments to class members) being seen through to its conclusion.

The term sheet was negotiated by Plaintiffs' Law Firms, ERISA Counsel and counsel for State Street between June 30 and September 11, 2015. The DOL became involved during this timeframe in negotiating, along with the foregoing parties, the portion of the class settlement

funds ($60 million, minus up to $10.9 million in attorneys' fees) that would be payable to ERISA plans for the DOL to be satisfied that it need not pursue separate claims against State Street. This was memorialized in the term sheet that was executed on or about September 11, 2015.

Documentation concerning the Final Settlement in the SST Litigation (including forms of notice to the class) was drafted and finalized over the succeeding months by Plaintiffs' Law Firms, ERISA counsel, and counsel for State Street, while State Street separately worked to finalize its agreements with the DOJ, DOL, and SEC. The Final Settlement in the SST Litigation was executed on or about July 26, 2016.

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

INTERROGATORY NO. 61:

Describe how the Law Firm and/or the Plaintiffs' Law Firms arrived at a total fee percentage roughly equal to 25% of the final Fee Award. Please explain whether the Firm prepared its Lodestar calculation to achieve a 25% award of the total settlement amount.

RESPONSE TO INTERROGATORY NO. 61:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is vague, overbroad, lacks foundation, and is argumentative. Subject to and without waving those objections, LCHB responds as follows:

The Plaintiffs' Law Firms requested a Fee Award for all counsel (including ERISA counsel) of roughly 25% of the total Settlement fund of $300 million (the "Settlement Fund") based on their understanding of the typical percentage contingent fees awarded in complex class cases such as the SST Litigation and supported under applicable authority in the First Circuit (as discussed in Plaintiff's fee brief, ECF No. 103-1). This understanding was bolstered by the

Court's comments in a status conference before the fee request was actually made. At that conference (on June 23, 2016), the Court stated that a 25% fee percentage was "great" and was the level at which the Court "start[ed] ordinarily," and expressed satisfaction that counsel would not be requesting more. In no way did the Firm "prepare . . . its Lodestar calculation to achieve a 25% award of the total settlement amount." The Firm's lodestar was compiled and reported to the Court solely for "cross-check" purposes in order to assist the Court in determining, as is typical wherever a "cross-check" is employed, whether a 25% fee for all counsel constituted an unjustifiable "windfall" in light of the work performed and risk undertaken.

LCHB was ultimately paid 24% of the total fee that was awarded to all counsel, or $15,116,965.50 (along with $ 271,944.53 in reimbursement for the costs it had advanced in the SST Litigation). This individual payment to LCHB, which translates to just under a 1.69 "multiplier" based on LCHB's individual corrected lodestar of $8,961,570.50 (using 2016 rates), was agreed to between and among Plaintiffs' Law Firms before the combined fee request was made in September 2016. It bears noting that LCHB was paid a smaller share of the total Fee Award than either Labaton (who was Lead Counsel and had the client relationship with ARTRS) or Thornton (who was Liaison Counsel), and thus benefited from the smallest individual lodestar multiplier of the three Plaintiffs' Law Firms. It further bears noting that LCHB's corrected individual multiplier of 1.69 is not only less than the collective corrected lodestar multiplier of 2.0 that was reported for all counsel in the November 10, 2016 letter to the Court, but also less than the collective lodestar multiplier of 1.8 that was originally deemed reasonable by the Court in the Fee Award before the inadvertent duplication of some Staff Attorney hours was even discovered and corrected.

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

INTERROGATORY NO. 65:

Identify, in detail, each error in your Fee Petition, 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. 65:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is vague and overbroad. LCHB further objects to this Interrogatory on the grounds that it is burdensome and duplicative of other discovery directed to LCHB, including prior Interrogatories and the Deposition of Daniel P. Chiplock. Subject to and without waiving those objections, LCHB responds as follows:

For its Response, LCHB refers to and incorporates its prior Responses to Interrogatory Nos. 39, 40, 66-69, 72, and 73. In further response, LCHB states that 327 hours for Staff Attorney Jonathan Zaul and 359.5 hours for Christopher Jordan that were worked over a roughly 9-week period between February and April 2015 were erroneously included in LCHB's Fee Petition notwithstanding the fact that LCHB invoiced and received payment from Thornton for these specific hours of Messrs. Zaul and Jordan's employment. LCHB attributes this error to its inadvertent failure to remove from its timekeeping records, after preparing its invoice(s), any hours worked by these two attorneys for which LCHB was ultimately reimbursed by Thornton.

LCHB also erroneously included in its Fee Petition 490.7 hours for Ann Ten Eyck and 580.6 hours for Rachel Wintterle that were worked during the 3 ½ month period from March through June 2015 even though Ms. Ten Eyck and Ms. Wintterle were employed by an outside

agency that was paid directly by Thornton. LCHB attributes this error to the fact that Ms. Ten Eyck and Ms. Wintterle erroneously (and unbeknownst to the supervising LCHB attorneys on the case, as well as Mr. Dugar) submitted their contemporaneous time records to LCHB's Accounting Department in San Francisco (where they physically worked) while also (correctly) reporting their time to both their employing agency and to Thornton.

Shortly after these bookkeeping errors were discovered on November 9, 2016, Mr. Chiplock instructed LCHB's Accounting Department to remove all of the erroneously recorded hours that in fact had been Thornton's financial responsibility from LCHB's timekeeping records. LCHB helped draft the corrective letter that was submitted to the Court on November 10, 2016, and also prepared a proposed corrected Fee Petition to be filed in case the Court requested it.

In making its corrections, LCHB consulted and relied upon correspondence between and among its own staff and attorneys as well as those at Thornton during the early to mid-2015 timeframe, in addition to Thornton's Fee Petition.

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

INTERROGATORY NO. 75:

Identify and describe the steps taken by the Firm to identify documents responsive to the corresponding Requests for Production of Documents served by the Special Master including, without limitation, the name and title of those involved, the process undertaken, the database and documents searched, and the parameters of any electronic search including date range, timekeepers and search terms.

RESPONSE TO INTERROGATORY NO. 75:

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

To identify documents responsive to the corresponding Requests for Production of Documents served by the Special Master (the "Document Requests"), Adam McRen of LCHB's HelpDesk (at Steven Fineman's instruction) ran a query for all emails that listed Dan Chiplock, Nick Diamand, or Kirti Dugar as the recipient (directly or as a copy or blind copy) or sender, and any of the names listed below as the recipient (directly or as a copy or blind copy) or sender, and where the words "State Street", "STT", "SS", "document", "contract", "contract lawyers", "review", "reviewers", "staff attorney", "billable", "rates" or "hours" appeared in the subject line or the body of the email, for the time period, January 1, 2010 – December 31, 2016:

Michael Lesser (mlesser@tenlaw.com)

Evan Hoffman (ehoffman@tenlaw.com)

Garrett Bradley (gbradley@tenlaw.com)

Michael Thornton (mthornton@tenlaw.com)

Robert Lieff (rlieff@lchb.com)

Eric Belfi (ebelfi@labaton.com)

Michael Rogers (mrogers@labaton.com)

David Goldsmith (dgoldsmith@labaton.com)

Lawrence Sucharow (lsucharow@labaton.com)

Mr. McRen also retrieved all emails by and between Messrs. Chiplock, Diamand, and Dugar, and any of the LCHB Staff Attorneys (Tanya Ashur, Joshua Bloomfield, Elizabeth

Brehm, Jade Butman, James Gilyard, Kelly Gralewski, Christopher Jordan, Jason Kim, James Leggett, Coleen Lieberman, Andrew McClelland, Scott Miloro, Leah Nutting, Marissa Oh, Peter Roos, Ryan Sturtevant, Virginia Weiss and Jonathan Zaul), applying the same search terms and time period as above.

The foregoing emails were reviewed for relevance and responsiveness to the Document Requests. Separately, Mr. Dugar and Mr. Chiplock also searched their individual email archives for emails specifically responsive to the Document Requests, to the extent they may not have been captured by the search parameters described above. Mr. Dugar specifically searched for any responsive communications with any Staff Attorneys, including Ms. Ten Eyck and Ms. Wintterle.

In addition, at Mr. Fineman's direction, the Firm's records and files were searched for responsive operational and accounting documents and emails.

Daniel P. Chiplock, LCHB Partner, Kirti Dugar, LCHB Litigation Support Manager, and Steven E. Fineman, LCHB Managing Partner, have knowledge of the information provided in this Response.

INTERROGATORY NO. 76:

Identify with specificity sufficient to constitute a valid response to a request for production of documents, any documents identified by you as responsive to the Special Master's Request for Production of Documents but withheld from production to the Special Master on grounds of any evidentiary or other privilege or otherwise including (a) the type of document; (b) its date if any; (c) any identifying marks such as bates stamp or other numeric designation; (d) the reason you withheld it from production; and (e) the current location of the document. To the extent any such Document or other responsive document has been destroyed, identify (a) the

type of document; (b) its date, if any; (c) the date of its destruction; (d) the circumstance thereof; and (e) the persons involved therein. For each such person, please provide their name, current or prior title or position with the Law Firm, the date, if any, of termination of employment with the Law Firm and the reason therefor, and the last known residential and business address.

RESPONSE TO INTERROGATORY NO. 76:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB responds that it can identify no such documents.

Daniel P. Chiplock, LCHB Partner, and Steven E. Fineman, LCHB Managing Partner, have knowledge of the information provided in this Response.

INTERROGATORY NO. 77:

Identify the timekeeping, accounting, and billing software systems utilized by the Law Firm to record and bill attorney time charges, costs and expenses associated with legal and other services rendered by the Law Firm in connection with the SST Litigation and the persons within the Law Firm with the most knowledge and responsibility for the system and operation.

RESPONSE TO INTERROGATORY NO. 77:

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

During all relevant times, LCHB has used Thomson Reuters Elite "Timekeeping, Accounting and Billing Software Systems" "to record and bill attorney time, charges, costs and expenses associated with legal… services rendered by the Law Firm…." *See* www.elite.com. The persons within LCHB most knowledgeable and with responsibility for the Elite system are Jim Fanucchi in the firm's Accounting Department and Scott Hedrick in the firm's Information Technology Department.

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

Dated: July 10, 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 C

DONOGHUE BARRETT & SINGAL

May 18, 2017

Via Email and First-Class Mail

Richard M. Heimann, Esq.
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111

Re: Special Master's First Set of Interrogatories and Requests for Production to Lieff Cabraser Heimann & Bernstein, LLP

Arkansas Teacher Retirement System, et al v. State Street Corporation, et al., C.A. No. 1:11-cv-10230-MLW;

Dear Mr. Heimann:

Please find enclosed *Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories and First Set of Requests for Production to Lieff Cabraser Heimann & Bernstein, LLP*, propounded pursuant to Rule 53 of the Federal Rules of Civil Procedure and the Court's March 8, 2017 Order. All documents and/or responses produced in response to the enclosed written requests shall be subject to the *Limited Protective Order of the Special Master* entered on March 29, 2017, and produced on a rolling basis, but in no event later than June 1, 2017.

I understand that several of the requests for documents may seek information, in whole or in part, that Lieff has previously provided to me, on behalf of the Special Master, in response to our preliminary document requests. In each such instance, please identify the Bates numbers, date of production, and general description of all documents, and indicate the specific request or interrogatory to which they are responsive. Such information need not be produced again.

Furthermore, should Lieff object to one or more of the requests and/or interrogatories, for any reason, including but not limited to objections relating to scope, privilege, or technical barriers to production, Lieff should immediately raise its objection(s) in a letter addressed to me and Judge Rosen explaining the specific nature of the objection and identifying all corresponding requests and/or interrogatories.

Donoghue Barrett & Singal
One Beacon Street, Suite 1320
Boston, MA 02108–3106
T 617.720.5090
F 617.720.5092
www.dbslawfirm.com

DONOGHUE BARRETT & SINGAL

Notwithstanding any objections properly asserted, Lieff should respond fully to all other requests at the earliest possible occasion, and in no event later than June 1, 2017. To the greatest extent possible, all documents must be ***in electronically-readable format***.

Please contact me should you have any questions.

Very truly yours,

William F. Sinnott
Counsel to the Special Master

Encs.

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

SPECIAL MASTER HONORABLE GERALD E. ROSEN'S (RET.) FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS TO LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Pursuant to Rule 53(c) of the Federal Rules and the Court's March 8, 2017 Order (pp. 3-4), Special Master Honorable Gerald E. Rosen (Retired), by his undersigned counsel, hereby requests that Lieff Cabraser Heimann & Bernstein, LLP produce the documents described below for inspection and copying at the offices of Donoghue Barrett & Singal, P.C., One Beacon Street, Suite 1320, Boston, Massachusetts 02108, within fourteen (14) days from the date of service hereof.

DEFINITIONS

1. The terms "you", "your", "the Firm", and "the Law Firm" refer to Lieff Cabraser Heimann & Bernstein, LLP, and all of its employees, contractors, affiliates, agents, counsels, and representatives.

2. The term "Thornton" refers to Thornton Law Firm, LLP, formerly known as Thornton & Naumes, LLP, and all employees, agents, counsels, attorneys, and representatives.

3. The term "Labaton" or "Labaton Sucharow" refers to Labaton Sucharow LLP, and all of its employees, contractors, affiliates, agents, counsels, and representatives.

4. The term "Plaintiffs' Law Firms" refers to Labaton Lieff, and/or Thornton, and their respective employees, contractors, affiliates, agents, counsels, and representatives, collectively and/or individually.

5. The term "ERISA firms" or "ERISA counsel" refers to Brian McTigue and/or the McTigue Law Firm, the Law Offices of Keller Rohrback, LLP, Zuckerman Spaeder, LLP, Beins Alexrod, P.C., and any firms retained by one or more of the above, and all employees, agents, counsels, attorneys, and representatives.

6. The term "ARTRS" refers to the Arkansas Teacher Retirement System and/or its Executive Director, George Hopkins, Esq.

7. The term "State Street Litigation", "SST Litigation" or "Litigation" refers to *Arkansas Teacher Retirement System, et al. v. State Street Corporation, et al.*, C.A. No. 1:11-cv-10230-MLW, pending in the United States District Court for the District of Massachusetts.

8. The term "State Street Document Review", "SST Document Review" or "Document Review" refers to the Law Firm's review of hard copy and electronic documents produced as part of discovery in *Arkansas Teacher Retirement System, et al. v. State Street Corporation, et al.*, C.A. No. 1:11-cv-10230-MLW, pending in the United States District Court for the District of Massachusetts.

9. The term "State Street" refers to State Street Bank and Trust Company and/or State Street Global Markets, defendants in the SST Litigation.

10. The term "settlement in principle" refers to the settlement agreement reached in substance between counsel by and through mediation.

11. The term "Court" refers to the United States District Court for the District of Massachusetts.

12. The term "Fee Petition" or "Fee Application" refers 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, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs* (Docket #104), and Exhibits 1-32 attached thereto, filed with the Court in the State Street Litigation. In particular, "Fee Petition" in conjunction with one or more of the individual firms, refers to the respective Exhibit (and exhibits attached thereto) in which an individual law firm sought approval for payment of its respective fee and expenses

incurred in the SST Litigation, including all declarations, affidavits, and/or the Lodestar reports filed therewith.

13. The term "Motion for Attorneys' Fees" refers to Lead Counsel's Motion for An Award of Attorneys' Fees and Payment of Litigation Expenses, including the Memorandum in Support and exhibits, filed with the Court on or about September 15, 2016 and October 21, 2016, respectively (Docket #102, 108).

14. The term "Final Settlement" refers to the Stipulation and Agreement of Settlement dated July 26, 2016 (Docket #89).

15. The term "Fee Award" refers to a certain award of attorneys' fees of $74,541,250.00 and expenses and costs of $1,257,697.94, as approved by the Court in the Lawsuit by Order dated November 2, 2016.

16. The term "November 10, 2016 Letter" refers to the letter from David Goldsmith to Judge Wolf dated November 10, 2016 (Exhibit A to Docket #117), advising the Court of inadvertent errors in the Fee Petitions and Fee Order.

17. The term "December 17, 2016 Article" refers to the Boston Globe article entitled *Critics hit law firms' bills after class-action lawsuits*, published on or about December 17, 2016.

18. The term "hourly rates charged" refers to the hourly billing rates corresponding to work of an individual attorney or staff member of the firm, appearing on a fee petition submitted to the Court or otherwise charged to a client for work performed on a legal matter, including the rates listed on the Fee Petitions submitted in the SST Litigation.

19. The term "Staff Attorneys" refers to licensed attorneys working on a part-time or full-time basis for the Law Firm, but who are not deemed "associates" or otherwise on a traditional partnership track.

20. The term "hourly clients" refers to all past, present, and prospective clients who agree to pay and/or are charged for legal services rendered on an hourly basis, notwithstanding the actual amount paid or collected.

21. The term "non-hourly clients" refers to all past, present, and prospective clients who do not pay for legal services on an hourly rate, such as clients paying a flat fee, retained through a contingency arrangement and/or class action litigation, or other non-hourly fee structure, notwithstanding the actual amount paid or collected.

22. Any word written in the singular also includes the plural and vice-versa.

23. In case of doubt as to the scope of a clause including "and," "or," "any," "all," "each," or "every," the intended meaning is inclusive rather than exclusive.

24. The term "any" and the term "all" are intended to mean "any and all."

25. As used herein, the term "or" and the term "and" shall mean "and/or" and vice-versa.

26. As used herein, the terms "relating to" or "referring to" or "concerning" or "constituting" or the like mean and include all documents that in any manner or form are relevant in any way to or bear upon the subject matter in question, including, without limitation, all documents which contain, record, reflect, summarize, evaluate, comment upon, transmit, refer to, or discuss that subject matter or that in any manner state the background of, or were the basis or bases for, or that record, evaluate comment upon, or were referred to, relied upon, utilized, generated, transmitted, or received in arriving at, your conclusions, opinions, estimates, calculations, positions, decisions, beliefs, assertions or allegations, that undermine, contradict, or conflict with your conclusions, opinions, calculations, estimates, positions, beliefs, assertions, or allegations, concerning the subject matter in question.

27. The term "date" means the exact day, month, and year, if ascertainable, or the best approximation thereof if not.

28. The term "communication" as used herein includes, without limitation, the following: conversations, telephone conversations, e-mails, text messages, social media communications, and other electronic transmissions of any kind, statements, discussions, debates, arguments, disclosures, interviews, consultation and every other manner of oral utterance, correspondence, or electronic or written transmittals of information or messages of any kind.

29. The term "document" shall mean those things described in Rule 34(a) of the Federal Rules of Civil Procedure. The terms "document" and "documents" are used herein in the broadest possible sense and mean written, typed, printed, recorded or graphic matter, however produced or reproduced of any kind and description, and whether an original, master, duplicate or copy, including, but not limited to, e-mails, papers, notes, accounts, books, advertisements, letters, memoranda, notes of conversations, contracts, agreements, drawings, telegrams, tape recordings, communications (as defined in paragraph 28 hereof), including inter-office and intra-office memoranda reports, studies, working papers, corporate records, minutes of meetings, notebooks, bank deposit slips, bank checks, canceled checks, diaries, diary entries, appointment books, desk calendars, photographs, transcriptions or sound recordings or any type of personal or telephone conversations or negotiations, meetings or conferences, or things similar to any of the foregoing, and to include any data, information or statistics contained within any data storage modules, tapes, discs or other memory device, or other information retrievable from storage systems, including but not limited to, computer-generated reports and printouts. If any document has been prepared in multiple copies which are not identical, each modified copy or

non-identical copy is a separate "document." The word "document" also includes data compilations from which information can be obtained and translated, if necessary, by the respondent through detection devices in a reasonably usable form.

30. The term "draft" shall mean any earlier, preliminary, preparatory, proposed, or tentative version of all or part of a document, whether or not such draft was superseded by a later draft or final document and whether or not the terms of the draft are the same or different from the terms of the final document.

INSTRUCTIONS

A. Unless otherwise specified, these requests seek documents for the period from January 1, 2010 until the present.

B. This document request ("Request") requires you to produce all documents called for herein that were created or originated by you, or that came into your possession, custody or control, from all files or other sources that contain responsive documents, wherever located and whether active, in storage, or otherwise.

C. This Request shall be deemed to include any document now or at any time in your possession, custody, or control. A document is deemed to be in your possession, custody, or control if it is in your physical custody, or if it is in the physical custody of any other person and you: (i) own such document in whole or in part; (ii) have a right, by contract, statute, or otherwise, to use, inspect, examine, or copy such document on any terms; (iii) have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or (iv) as a practical matter, have been able to use, inspect, examine, or copy such document when you sought to do so. If any requested document was, but no longer is, in your control, state the disposition of each such document.

D. The obligation to produce the documents specified below is of a continuing nature; your production is to be supplemented if at any time you acquire possession, custody, or control of any additional responsive documents, or otherwise discover additional responsive documents, between the time of initial production and conclusion of the investigation, to the fullest extent required by the Federal Rules of Civil Procedure, the March 8, 2017 Court order, and the Local Rules of this Court.

E. Where only a portion of a document relates or refers to the subject indicated, the entire document is to be produced nevertheless, along with all attachments, appendices and exhibits.

F. Each document produced in response to the Requests below should be clearly categorized to indicate which Request(s) it is responsive to.

G. If any document or portion thereof is withheld under a claim of privilege, you shall produce so much of the document as is not subject to the possible claim of privilege, and shall furnish a statement, signed by an attorney representing you, which identifies each document or portion thereof for which a privilege is claimed, including the following information:

(i) The date of the document;

(ii) The name and title of the person who sent, authored, prepared, signed, or originated the document, or of the person who knows about the information contained therein;

(iii) The name and title of the recipient of the document;

(iv) All persons to whom copies of the document were furnished, along with such persons' job titles or positions;

(v) A brief description of the subject matter or nature of the document sufficient to assess whether the assertion of privilege is valid;

(vi) The specific basis upon which the privilege is claimed;

(vii) With respect to any claim of privilege relating to an attorney, or action or advice or work product of an attorney, the identity of the attorney involved; and

(viii) The paragraphs of this request to which such document responds.

H. All documents shall be produced as they are kept in the ordinary course of business and in their original file folders with any identifying labels, file markings, or similar identifying features. If there are no documents responsive to a category specified below, you shall so state in a writing produced at the time and place that documents are demanded to be produced by this request.

I. Documents created or stored electronically must be produced in their original electronic format, and not printed to paper or PDF. All electronically stored information ("ESI") shall be produced in electronic form (the "production set"). Each document will have its own unique identifier ("Bates number"), which must be consistently formatted across the production, comprising of an alpha prefix and a fixed length number of digits (e.g., "PREFIX0000001"). The production set shall consist of, and meet, the following specifications:

1. Image Files. All ESI will be rendered to single-page, black and white, Group IV *tagged image file* (".tif" or ".tiff") images with a resolution of 300 dpi, the file name for each page is named after its corresponding Bates number. Records in which a color copy is necessary to interpret the document (e.g., photographs, presentations, AUTOCAD, etc.) will be rendered to higher resolution, single-page *joint photographic experts group* (".jpg" or ".jpeg") format. Endorsements must follow these guidelines:

    a. Bates numbers must be stamped on the lower right hand corner of all images.

    b. Confidentiality must be stamped on the lower left hand corner of all images.

    c. Other pertinent language may be stamped on the bottom center, or top of the images, as deemed necessary.

2. Load Files. All ESI must be produced with appropriate data load files, denoting logical document boundaries. The following files should be included within each production set.

    a. A Concordance delimited ASCII text file (".dat").

i. The .dat file will contain metadata from the original native documents, wherein the header row (*i.e.*, the first line) of the .dat file must identify the metadata fields.

ii. The .dat file must be delimited with the standard Concordance delimiters (the use of commas and quotes as delimiters is not acceptable):

ASCII 020 [¶] for the comma character;
ASCII 254 [þ] for the quote character; and
ASCII 174 [®] for new line.

iii. All attachments, or *child* records, should sequentially follow the *parent* record.

iv. The following fields and metadata will be produced:

Beginning Bates; Ending Bates; Beginning Bates Attachment; Ending Bates Attachment; Custodian; File Name; From; Recipient; CC; BCC; Subject; Date Sent; Time Sent; Last Modified Date; Last Modified Time; Author; Title; Date Created; Time Created; Document Extension; Page Count; MD5Hash; Text Path; and Native File Path.

b. Image cross-reference files, *Opticon* image file (".opt") and *IPRO View Load* file (".lfp"), which link images to the database and identifies appropriate document breaks.

J. If any document requested herein has been lost, discarded, or destroyed, that document so lost, discarded, or destroyed shall be identified in writing (produced at the time and place that documents are demanded to be produced by this request) as completely as possible, together with the following information: date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.

DOCUMENTS REQUESTED

1. The 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.

2. All so-called "hot docs," as understood or identified by the Law Firm, and any other documents or information identified during the SST Litigation bearing on the material issues in the Litigation, including but not limited to liability and damages.

3. All engagement letters, fee agreements, retention letters, and/or other documents referring to, relating to, or evidencing terms of the Law Firm's participation in the SST Litigation and/or representation of class representatives.

4. All 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 hourly clients, from 2008 to the present.

5. All 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 non-hourly clients, from 2008 to the present.

6. All documents and/or communications relating to how the Law Firm records, accounts for and/or seeks reimbursement for hours billed by Staff Attorneys in other class action or contingency cases, including the hourly rates the Law Firm would charge if successful, from 2010 to the present.

7. Copies of all billing rate tables, spreadsheets, fee binders, or other collection of the Law Firm's annual billing rates, from 2010 to the present.

8. All minutes, notes, recordings, memoranda or other documents relating to or created by the Law Firm's Managing Partner or Executive Committee during meetings to determine annual billing rates, from 2008 to the present.

9. All documents and/or communications between and among the Firm's Managing Partner and the Firm's Executive Committee relating to review and adjustment of annual billing rates, from 2008 to the present.

10. All documents and/or communications relating to the Law Firm's internal classification of costs and expenses, including but not limited to any ethical, legal, or factual opinions solicited by the firm by third parties regarding the classification of Staff Attorneys as fees vs. expenses.

11. A complete set of time records for all attorneys, including Staff Attorneys, and other Law Firm staff who worked on or contributed to the SST Litigation, including but not limited to hand-written time sheets/ledgers, emails, electronic entries, pre-bills, and/or client bills, including the hourly rate billed and/or corresponding to the hours recorded.

12. All documents referring to, relating to, evidencing or constituting the basis for and amounts of any costs and expenses billed, incurred or charged by the Law Firm for legal or other services rendered in connection with the SST Litigation including but not limited to documents pertaining to the terms under which Staff Attorneys and/or third parties provided services to the Law Firm in the Lawsuit.

13. All documents and/or communications relating to or evidencing the Law Firm's use of Catalyst in connection with the SST Document Review, including all records of time spent in the Catalyst database, costs incurred, and coding of electronic documents.

14. All W-2s, 1099s, paystubs, or other documentation of payments made to the Firm attorneys and non-legal staff assigned to or who contributed to the SST Litigation, for work performed on the Litigation.

15. All W-2s, 1099s, paystubs, or other documentation of payments made to the Firm's Staff Attorneys assigned to or who contributed to the SST Litigation, for work performed on the Litigation.

16. All documents referring to, relating to, evidencing or constituting discussions between the Law Firm and the Plaintiffs' Law Firms relating to sharing costs and/or expenses of the SST Document Review/SST Litigation, including but not limited to sharing the cost of Staff Attorneys, hosting costs for Catalyst database, and other expenses associated with conducting voluminous document review.

17. All agreements, contracts, and/or memorialization of an arrangement to allocate and/or share the cost of certain of the Law Firm's Staff Attorneys to Thornton, including the compensation, reimbursement, and/or invoicing of costs associated with the same.

18. All documents referring to, relating to, evidencing or constituting discussions with Thornton regarding Thornton's plan or intention to include Staff Attorney time as part of Thornton's Fee Petition and/or Lodestar calculation.

19. All expert reports, factual or legal opinions, or other work product solicited from a third-party by the Law Firm in connection with factual and/or legal issues arising in the SST Litigation, including but not limited to the foreign-exchange market, foreign-exchange trading practices, and custodial management of retirement funds.

20. All documents and/or communications relating to or evidencing discussions between and among the Law Firm, the Plaintiffs' Law Firms, and/or ERISA counsel regarding the allocation of a certain percentage of the Fee Award among counsel, including but not limited to agreements to pay ERISA counsel a fixed percentage of the total Fee Award.

21. All documents and/or communications relating to discussions between and among the Plaintiffs' Law Firms and ARTRS/George Hopkins regarding the substantive allegations and progress of the SST litigation, including but not limited to the filing of the complaint/amended complaint, court orders, mediation, and/or the agreement to settlement in principle.

22. All documents and/or communications with ARTRS/George Hopkins regarding the Final Settlement, including but not limited to the fairness of the total award for the class, payment of service award, and the Fee Award, including any allocation of those fees among counsel.

23. Current CVs or resumes for all Staff Attorneys who worked on or contributed to the SST Litigation/Document Review.

24. All written guidance, training manuals, policies/procedures, search criteria, other documents provided to the Firm's Staff Attorneys relating to the SST Document Review, including but not limited to materials related to use of Catalyst database.

25. All other documents relating to the SST Litigation, other than those responsive to Request No. 24 above, that the Law Firm provided to its Staff Attorneys, including but not limited to case pleadings, mediation reports, legal memoranda.

26. All written work product produced by Staff Attorneys assigned to the SST Litigation/SST Document Review, including all memoranda, factual summaries, deposition preparation, written analyses, witness kits, summaries.

27. A complete copy of the binder(s) containing discursive memoranda pertaining to the SST Litigation/SST Document Review, including all attachments.

28. All presentations, memoranda, or other submissions, including potential exhibits, any plaintiffs' counsel prepared for or submitted to the mediator, including all exhibits thereto.

29. All communications between the Law Firm and counsel for State Street relating to the SST Litigation, including but not limited to document productions, mediations, and settlement.

30. All communications with the U.S. Department of Labor, including all local field offices, the U.S. Attorney's Office, the U.S. Department of Justice, and/or the U.S. Securities and Exchange Commission relating to the SST Litigation.

31. All documents and/or communications relating to the selection and staffing of Staff Attorneys on the SST Litigation/SST Document Review.

32. All documents and/or communications relating to the allocation of certain Staff Attorneys to Thornton under the cost-sharing agreement entered into by the Firm in or about 2014 or 2015.

33. All documents relating to, referring to or evidencing a secondary review or quality control process of the SST Document Review performed by the Law Firm.

34. All documents and/or communications between and among the Law Firm and its accounting and/or billing personnel relating to the accounting for, recording, and/or invoicing of Staff Attorneys for whom Thornton had agreed to share the costs.

35. All documents and/or communications between and among the Law Firm and accounting and/or billing staff requesting nullification of or requesting removal from the Fee Petition of certain hours worked by Staff Attorneys for whom another firm or Company had agreed to share the costs.

36. All documents and/or communications between and among the Law Firm and accounting and/or billing staff requesting nullification of or requesting removal from the Fee Petition of certain hours worked by Staff Attorneys for whom another firm or Company had agreed to share the costs in other class action or litigation matters.

37. All invoices, requests for payment, and/or similar documents sent to or requested by Thornton pursuant to the cost-sharing agreement between the Firm and Thornton to share the costs of certain Staff Attorneys, including all emails or other communications related to the same.

38. All documents relied upon by the Law Firm in preparing and filing the Firm's Fee Petition, including but not limited to expense reports, billing records, emails, invoices, and/or other records.

39. All documents, other than those requested in Request No. 38 above, reviewed or considered by the Law Firm in calculating the Firm's Lodestar calculation.

40. All documents relating to, referring to, or constituting the Law Firm's Fee Petition, including all drafts, spreadsheets, outlines, notes, emails.

41. All documents relating to, referring to, or constituting the Motion for Attorneys' Fees, including all drafts, spreadsheets, outlines, notes, emails.

42. All documents relied upon by the Law Firm in preparing and filing the Motion for Attorneys' Fees.

43. All communications between and among the Law Firm, the Plaintiffs' Law Firms, and the ERISA firms, relating to preparation of the Motion for Attorneys' Fees and/or the Fee Petitions filed in the SST Litigation.

44. All documents and/or communications relating to the discovery of billing errors disclosed in the November 10, 2016 Letter filed with the Court, including but not limited to communications between and among you, the Plaintiffs' Law Firms, class representatives, and/or the ERISA firms.

45. All documents, including notes, outline, drafts and exhibits, explaining or attempting to correct any part of the Fee Petition(s).

46. All documents illustrating, demonstrating, or establishing any errors you or anyone identified in any part of the Fee Petition(s).

47. All documents relating to, referring to, evidencing, or constituting the November 10, 2016 Letter, including all drafts, outlines, notes, and communications relating to the filing of that correspondence.

48. All documents and/or communications relating to, referring to or evidencing corrective actions or subsequent review taken by the Law Firm after discovery of the billing errors disclosed in the November 10, 2016 Letter.

49. All documents and/or communications relating to the December 17, 2016 Article, including but not limited to communications between and among the Law Firm, the Plaintiffs' Law Firms, class representatives, and/or the ERISA firms.

50. All documents relating to Michael Bradley's involvement in the SST Litigation/SST Document Review, including but not limited to communications with Mr. Bradley and all documents relating to or referring to an agreement between Mr. Bradley and Thornton to participate in the SST Document Review.

51. All documents relating to, referring to or evidencing payments made to Michael Bradley in connection with his work on the SST Litigation/SST Document Review.

52. All written work product produced by Michael Bradley as part of his involvement in the SST Litigation/SST Document Review, including all memoranda, factual summaries, deposition preparation, written analyses, witness kits, summaries.

53. All documents you may contend support your Fee Petition for reimbursement of fees and/or expenses, which you have not produced thus far.

Date: May 18, 2017

SPECIAL MASTER HONORABLE GERALD E. ROSEN (RETIRED),

By his Attorneys,

William F. Sinnott (BBO #547423)
Elizabeth J. McEvoy 9BBO #683191)
DONOGHUE BARRETT & SINGAL, P.C.
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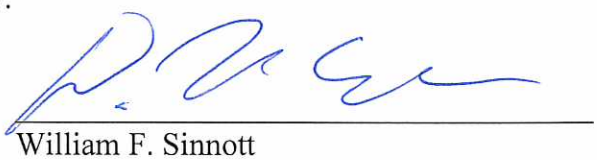
wsinnott@dbslawfirm.com
emcevoy@dbslawfirm.com

CERTIFICATE OF SERVICE

I, William F. Sinnott, hereby certify that I have caused a copy of the foregoing document to be served upon Richard M. Heimann, Esquire, Lieff Cabraser Heimann & Bernstein, LLP, 275 Battery Street, 29th Floor, San Francisco, CA 94111, by electronic mail and first class mail, postage prepaid, this 18th day of May, 2017.



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

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

Pursuant to Rule 53(c) of the Federal Rules of Civil Procedure and the Court's March 8, 2017 Order (pp. 3-4), Special Master Honorable Gerald E. Rosen's (Retired), by his undersigned counsel, hereby propounds the following Interrogatories upon Lieff Cabraser Heimann & Bernstein, LLP. The Special Master requests that Lieff Cabraser Heimann & Bernstein, LLP answer the Interrogatories herein under oath and provide responses within fourteen (14) days from the date of service hereof, to: William F. Sinnott, Esq., Donoghue Barrett & Singal, P.C., One Beacon Street, Suite 1320, Boston, Massachusetts 02108.

DEFINITIONS

1. The term "you", "your", "the Firm", and "the Law Firm" refer to Lieff Cabraser Heimann & Bernstein, LLP, and all of its employees, contractors, affiliates, agents, counsels, and representatives.

2. The term "Thornton" refers to Thornton Law Firm, LLP, formerly known as Thornton & Naumes, LLP, and all employees, agents, counsels, attorneys, and representatives.

3. The term "Labaton" or "Labaton Sucharow" refers to Labaton Sucharow LLP, and all of its employees, contractors, affiliates, agents, counsels, and representatives.

4. The term "Plaintiffs' Law Firms" refers to Labaton, Lieff, and/or Thornton, and their respective employees, contractors, affiliates, agents, counsels, and representatives, collectively and/or individually.

5. The term "ERISA firms" or "ERISA counsel" refers to Brian McTigue and/or the McTigue Law Firm, the Law Offices of Keller Rohrback, LLP, Zuckerman Spaeder, LLP, Beins Alexrod, P.C., and any firms retained by one or more of the above, and all employees, agents, counsels, attorneys, and representatives.

6. The term "ARTRS" refers to the Arkansas Teacher Retirement System and/or its Executive Director, George Hopkins, Esq.

7. The term "State Street Litigation", "SST Litigation" or "Litigation" refers to *Arkansas Teacher Retirement System, et al. v. State Street Corporation, et al.*, C.A. No. 1:11-cv-10230-MLW, pending in the United States District Court for the District of Massachusetts.

8. The term "State Street Document Review", "SST Document Review" or "Document Review" refers to the Law Firm's review of hard copy and electronic documents produced as part of discovery in *Arkansas Teacher Retirement System, et al. v. State Street Corporation, et al.*, C.A. No. 1:11-cv-10230-MLW, pending in the United States District Court for the District of Massachusetts.

9. The term "State Street" refers to State Street Bank and Trust Company and/or State Street Global Markets, defendants in the SST Litigation.

10. The term "settlement in principle" refers to the settlement agreement reached in substance between counsel by and through mediation.

11. The term "Court" refers to the United States District Court for the District of Massachusetts.

12. The term "California Action" refers to the qui tam lawsuit(s) originally filed under seal in California and other states against State Street that was unsealed on or about October 20, 2009 by the intervention of the Attorney General for the State of California.

13. The term "BNY Mellon Action" refers to the investigation and prosecution of the multidistrict litigation entitled *In re Bank of New York Mellon Corp.* and related actions, including but not limited to Civil Action 12-MD-02335 filed in the United States District Court for the Southern District of New York.

14. The term "Fee Petition" or "Fee Application" refers 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, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs (Docket #104), and Exhibits 1-32 attached hereto, filed with the Court in the State Street Litigation. In particular, "Fee Petition" in conjunction with one or more of the individual firms, refers to the respective Exhibit (and exhibits attached thereto) in which an individual law firm sought approval for payment of its respective fee and expenses incurred in the SST Litigation, including all declarations, affidavits, and/or the Lodestar reports filed therewith.

15. The term "Motion for Attorneys' Fees" refers to Lead Counsel's Motion for An Award of Attorneys' Fees and Payment of Litigation Expenses, including the Memorandum in Support and exhibits, filed with the Court on or about September 15, 2016 and October 21, 2016, respectively (Docket #102, 108).

16. The term "Final Settlement" refers to the Stipulation and Agreement of Settlement dated July 26, 2016 (Docket #89).

17. The term "Fee Award" refers to a certain award of attorneys' fees of $74,541,250.00 and expenses and costs of $1,257,697.94, as approved by the Court in the Lawsuit by Order dated November 2, 2016.

18. The term "November 10, 2016 Letter" refers to the letter from David Goldsmith to Judge Wolf dated November 10, 2016 (Exhibit A to Docket #117), advising the Court of inadvertent errors in the Fee Petitions and Fee Order.

19. The term "December 17, 2016 Article" refers to the Boston Globe article entitled *Critics hit law firms' bills after class-action lawsuits*, published on or about December 17, 2016.

20. The term "hourly rates charged" refers to the hourly billing rates corresponding to work of an individual attorney or staff member of the firm, appearing on a fee petition submitted

to the Court or otherwise charged to a client for work performed on a legal matter, including the rates listed on the Fee Petitions submitted in the SST Litigation.

21. The term "Staff Attorneys" refers to licensed attorneys working on a part-time or full-time basis for the Law Firm, but who are not deemed "associates" or otherwise on a traditional partnership track.

22. The term "hourly clients" refers to all past, present, and prospective clients who agree to pay and/or are charged for legal services rendered on an hourly basis, notwithstanding the actual amount paid or collected.

23. The term "non-hourly clients" refers to all past, present, and prospective clients who do not pay for legal services on an hourly rate, such as clients paying a flat fee, retained through a contingency arrangement and/or class action litigation, or other non-hourly fee structure, notwithstanding the actual amount paid or collected.

24. Any word written in the singular also includes the plural and vice-versa.

25. In case of doubt as to the scope of a clause including "and," "or," "any," "all," "each," or "every," the intended meaning is inclusive rather than exclusive.

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28. As used herein, the terms "relating to" or "referring to" or "concerning" or "constituting" or the like mean and include all documents that in any manner or form are relevant in any way to or bear upon the subject matter in question, including, without limitation, all documents which contain, record, reflect, summarize, evaluate, comment upon, transmit, refer to, or discuss that subject matter or that in any manner state the background of, or were the basis or bases for, or that record, evaluate comment upon, or were referred to, relied upon, utilized,

generated, transmitted, or received in arriving at, your conclusions, opinions, estimates, calculations, positions, decisions, beliefs, assertions or allegations, that undermine, contradict, or conflict with your conclusions, opinions, calculations, estimates, positions, beliefs, assertions, or allegations, concerning the subject matter in question.

29. The term "date" means the exact day, month, and year, if ascertainable, or the best approximation thereof if not.

30. The term "communication" as used herein includes, without limitation, the following: conversations, telephone conversations, e-mails, text messages, social media communications, and other electronic transmissions of any kind, statements, discussions, debates, arguments, disclosures, interviews, consultation and every other manner of oral utterance, correspondence, or electronic or written transmittals of information or messages of any kind.

31. The term "document" shall mean those things described in Rule 34(a) of the Federal Rules of Civil Procedure. The terms "document" and "documents" are used herein in the broadest possible sense and mean written, typed, printed, recorded or graphic matter, however produced or reproduced of any kind and description, and whether an original, master, duplicate or copy, including, but not limited to, e-mails, papers, notes, accounts, books, advertisements, letters, memoranda, notes of conversations, contracts, agreements, drawings, telegrams, tape recordings, communications (as defined in paragraph 30 hereof), including inter-office and intra-office memoranda reports, studies, working papers, corporate records, minutes of meetings, notebooks, bank deposit slips, bank checks, canceled checks, diaries, diary entries, appointment books, desk calendars, photographs, transcriptions or sound recordings or any type of personal or telephone conversations or negotiations, meetings or conferences, or things similar to any of the foregoing, and to include any data, information or statistics contained

within any data storage modules, tapes, discs or other memory device, or other information retrievable from storage systems, including but not limited to, computer-generated reports and printouts. If any document has been prepared in multiple copies which are not identical, each modified copy or non-identical copy is a separate "document." The word "document" also includes data compilations from which information can be obtained and translated, if necessary, by the respondent through detection devices in a reasonably usable form.

32. The term "draft" shall mean any earlier, preliminary, preparatory, proposed, or tentative version of all or part of a document, whether or not such draft was superseded by a later draft or final document and whether or not the terms of the draft are the same or different from the terms of the final document.

INSTRUCTIONS

A. Pursuant to Rule 53(c) of the Federal Rules of Civil Procedure and the Court's March 8, 2017 Order (pp. 3-4), you are required to answer the following Interrogatories under oath and within 14 days, or within the time otherwise required by Court order.

B. For each of the Interrogatories listed below, please include the full name(s) of all persons from the Law Firm (attorneys, staff, agents, consultants, or affiliates) who have knowledge of the information provided.

C. These Interrogatories are deemed to be continuing and to require supplemental responses, if you obtain additional, contradictory, or different information. Such supplemental answers shall be filed promptly upon the discovery by you of such supplemental information. Each Interrogatory is to be answered separately and as completely as possible. The fact that an investigation is continuing and discovery is not complete shall not be used as a reason for failure to answer any Interrogatory as fully as possible.

D. If you refuse to answer any Interrogatory or any part thereof on the grounds of privilege, please identify the claimed privilege (i.e., attorney-client) and the nature of any information you refuse to disclose, referring specifically to the Interrogatory or any part thereof to which the claimed privilege applies, the form in which said information exists, and the grounds for the claimed privilege.

E. If the answer to all or any part of an Interrogatory is not presently known by or available to you, include a statement to that effect, specifying the portion of the Interrogatory which cannot be completely answered.

INTERROGATORIES

1. Describe each of the Law Firm's practice area(s), including areas of specialty, special services offered, the total number of attorneys and staff, and a brief description of any representative matters.

2. Identify all other class actions or other litigations in which the Firm has been or is currently engaged in relating to the foreign-exchange market, mismanagement of retirement funds, and/or any other subject matter overlapping the allegations in the SST Litigation. Please include all such matters on which the Firm has worked, as counsel of record or otherwise, the complete case caption, the docket number, and the outcome.

3. Describe in detail the Firm's involvement in the California Action and in the BNY Mellon Action and how that involvement assisted the Firm in the SST Litigation.

4. Identify all other class actions or other litigation in which the Firm was engaged during the pendency of the SST Litigation. For each action:

   a. Please identify the timekeepers who worked on the matter and provide their hourly rate(s);

b. Please provide the detailed, itemized hourly billing entries for each timekeeper.

5. Explain how and when the Law Firm became involved in the SST Litigation, including any conversations between and among the Firm and ARTRS, the Plaintiffs' Law Firms, and/or the ERISA firms.

6. Describe the role played by the Law Firm in filing the substantive claims alleged in the SST Litigation, including the filing of the Complaint (Docket #1) and/or the Amended Complaint (Docket #10), a description of any legal or factual research performed, consultations with State Street, legal drafting and/or review of pleadings.

7. Summarize the factual basis for State Street's liability and your/plaintiffs' contention that State Street was legally liable for damages to the class members.

8. Describe the Firm's theory of damages, including an estimate of total damages to the customer and/or ERISA classes, whether this theory changed throughout the course of the SST Litigation, and if so, what factors affected the Firm's theory and total calculation of estimated damages.

9. Identify and describe all risk factors you considered prior to getting involved in the SST Litigation, including any "bad facts," meritorious defenses and/or unsettled legal issues, or other circumstances that affected the potential outcome and total damages recoverable in the case.

10. Describe the frequency and nature of communications with the Plaintiffs' Law Firms over the course of the Litigation. Please specify the attorneys with whom you dealt and the basic substance of those conversations.

11. Describe the role of the U.S. Department of Labor, including any field divisions or offices, the U.S. Attorney's Office, the U.S. Department of Justice, and/or the U.S. Securities and Exchange Commission, in the SST Litigation and the basic substance of the Law Firm's communications with each agency through the course of the Litigation.

12. Explain the role played by ARTRS and/or George Hopkins in the SST Litigation, including Mr. Hopkins' substantive contributions to the pleadings and/or case strategy, and what, if any, role he had in the negotiation and mediation of the Final Settlement.

13. Describe the frequency and nature of communications with ERISA counsel over the course of the Litigation. Please specify the attorneys with whom you dealt and the basic substance of those conversations.

14. Explain the Law Firm's litigation strategy in pursuing the claims raised in the SST Litigation, including the strategy employed in mediation. Identify and describe all events that impacted or caused the Firm to change that strategy.

15. Explain any tensions and/or adversarial positions assumed between the ERISA counsel, on the one hand, and the Plaintiffs' Law Firms, on the other, including differences in litigation strategy, legal theories, damages, and/or theories of liability asserted during the SST Litigation.

16. Explain how the adversarial positions described above impacted or did not impact the Law Firm's strategy, including its discovery, mediation, and/or the settlement of the SST Litigation.

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.

18. Describe in detail the nature and the scope of the SST Document Review, including the total number of pages and/or size of the productions, the nature and date of each document production(s) received from State Street, all other document production(s) received in

connection with the Litigation, and a general description of the information contained in each production.

19. Describe in detail how the Law Firm conducted the SST Document Review, including how it selected and/or staffed Staff Attorneys, a description of all training binders/protocols or search terms used for Document Review, and a brief description of the tasks assigned to Staff Attorneys and any other individuals who participated, and how those tasks furthered the Firm's overall litigation strategy.

20. Describe how the Law Firm utilized the Catalyst database, including all persons who had access to the database, any electronic and/or technical training provided to those individuals, and a description of the information maintained in the Catalyst database during the course of the SST Document Review.

21. Describe in detail all documents destroyed and/or deleted from the Catalyst database, including the date, and explain why each document was deleted/destroyed.

22. Identify and describe any training the Firm provided to Staff Attorneys relating to the substantive allegations in the SST Litigation/SST Document Review, including addressing all legal issues, key witnesses, theories of liability, damages, and critical topics raised in the case.

23. Please list all class actions or other litigations in the past five years in which the Firm has assigned Staff Attorneys to work on the matter. For each matter, please list the full case caption, the docket number, the outcome of the case, and the hourly rates charged, if any, for each Staff Attorney who worked on the matter, and the nature of the work performed by the assigned Staff Attorneys.

24. Please list the full name of each Staff Attorney who worked on the SST Litigation/Document Review. Please include for each Staff Attorney: his/her employment classification (full-time/part-time employee or independent contractor); how long he or she

worked (has worked) at the Firm; the name/description of any other cases to which he or she was assigned during the pendency of SST Litigation/Document Review; whether he/she was allocated to Thornton for any portion of the SST Litigation; any prior experience in securities class action litigations, foreign-exchange trading and/or mismanagement of custodial funds; the physical location where the work was performed; and the hourly rate charged in the Fee Petition.

25. For each of the Staff Attorneys listed above, please describe all compensation paid to the Staff Attorney and the total number of hours recorded for work on the SST Litigation/Document Review.

26. Identify any other individuals who worked on the SST Document review who were not Staff Attorneys and explain their affiliation with the Law Firm, their employment status, and how they were compensated for their time.

27. Explain how Staff Attorneys working on the SST Litigation recorded, including through handwritten and/or interim measures, and subsequently reported their time to the Firm and what, if any, steps were taken by the Firm to review or scrutinize those hours.

28. Explain how the Firm supervised and/or performed quality control of the work performed by the Staff Attorneys and others who participated in the SST Document Review, including the name, title, and tasks performed by any supervising individual.

29. Explain in detail the job responsibilities and tasks performed by the Staff Attorneys assigned to the SST Document Review, including those Staff Attorneys allocated to Thornton, including but not limited to, coding, deposition preparation, creation of witness kits and similar work.

30. Describe the process for assigning and reviewing factual, legal, and/or discursive memoranda prepared by Staff Attorneys, including how such memoranda were relevant to, used as part of the SST Litigation, and/or shared among counsel.

31. Describe the Firm's understanding of how fees, costs and/or expenses associated with performance of discovery in the SST Document Review would be shared among the Firm, the Plaintiffs' Law Firms, and/or the ERISA firms, including but not limited to who would be responsible for: compensating Staff Attorneys for hours worked; hosting Catalyst and/or other electronic database(s); compiling "hot docs" and other documents relative to the liability and/or damages theories; and/or other expenses associated with the SST Document Review.

32. For each of the categories listed above, explain the Firm's understanding of how those fees, costs and/or expenses would be reported to the Court in the event of a successful verdict and/or settlement.

33. Explain the origin of the cost-sharing agreement with Thornton through which the Firm agreed to allocate the costs associated with a certain number of Staff Attorneys to Thornton, including the names and descriptions of all other matters in which the Firm entered into a similar arrangement (whether or not documented) to share costs with other firms, prior to or after the SST Litigation.

34. Describe the Firm's understanding, in or about early 2015, as to how Thornton would account for the allocation/sharing of costs for certain of the Firm's Staff Attorneys in its Fee Petition, including the Firm's understanding as to which firm was responsible for reporting the total number of hours worked by those Staff Attorneys on its Fee Petition and/or Lodestar calculation.

35. Please state whether the Firm's understanding of how Thornton would account for the sharing of Staff Attorney costs has changed since 2015, and if so, when, and explain what prompted that change.

36. Explain the Firm's current understanding of the all cost-sharing agreements (formal or informal) between the Law Firm and Thornton to allocate and/or share costs for

certain of the Firm's Staff Attorneys assigned to work on the SST Litigation.

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.

38. Describe in detail the process through which the Law Firm invoiced or otherwise sought reimbursement from Thornton for costs of those Staff Attorneys allocated to Thornton as part of the SST Litigation/Document Review.

39. Explain the Firm's process for removing time reported by Staff Attorneys allocated to Thornton for whom Thornton reimbursed the Firm, from the Firm's Fee Petition, including the role of the Firm's Accounting Department, and explain why time reported by Christopher Jordan and Jonathan Zaul for reviewing Thornton folders 2/9/15 to 4/14/15 was not removed from the Firm's timekeeping records.

40. Explain the Firm's process for removing time reported by Staff Attorneys allocated to Thornton for whom Thornton paid directly through a third-party staffing agency from the Firm's Fee Petition, including the role of the Firm's Accounting Department, and explain why time reported by Staff Attorneys Ann Ten Eyck and Rachel Wintterle for work performed from March through June 2015, was not removed from the Firm's timekeeping records.

41. Identify and describe all communications between the Law Firm and Thornton relating to the firms' cost-sharing agreement to share the costs of certain Staff Attorneys, including discussions regarding how those costs would be incorporated into the firms' respective Fee Petitions.

42. Identify and describe all communications between and among the Firm, Labaton, and Thornton relating to cost-sharing agreement(s) between any of the firms, including

discussions regarding how those costs would be incorporated into the firms' respective Fee Petitions.

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.

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.

45. 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.

46. Please describe any previous matters, whether based on a contingency, hourly, or other fee arrangement, in which the Firm engaged in a fee dispute with a client or class representative prior to the conclusion of the representation. For each such matter, explain how that fee dispute was resolved and any hourly rate/quantum meruit applied for work performed.

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.

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

49. Please list all of the Firm's hourly rates charged to hourly clients for each of the years 2010-2016. For each attorney, please list the relative experience level.

50. Please list all of the Firm's hourly rates charged to non-hourly clients (whether in class action or other contingency-fee litigation) for each of the years 2010-2016. For each attorney, please list the relative experience level.

51. Please list all of the hourly rates charged or associated with any matters in which the Firm has acted as local counsel for each of the years 2010-2016. For each attorney, please list the relative experience level.

52. Please identify the Firm's managing partner for each of the years from 2010 to present, and list all members of the Firm's Executive Committee and describe their respective roles in determining annual rates.

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.

54. Identify and describe all instances in which the Firm has billed an attorney at a lesser or higher rate than the annual rate determined by the Managing Partner, in conjunction with the Executive Committee, for a particular year and explain why that decision was made.

55. Describe in detail the process for finalizing the term sheet and Final Settlement in the SST Litigation, including the role of the U.S. Department of Labor, U.S. Attorney's Office, U.S. Department of Justice and/or the U.S. Securities and Exchange Commission in the negotiations.

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).

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.

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.

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.

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.

61. Describe how the Law Firm and/or the Plaintiffs' Law Firms arrived at a total fee percentage roughly equal to 25% of the final Fee Award. Please explain whether the Firm prepared its Lodestar calculation to achieve a 25% award of the total settlement amount.

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.

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.

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?

65. Identify, in detail, each error in your Fee Petition, 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).

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.

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.

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).

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

70. State the total number of class members and the estimated recovery or settlement amounts, net of fees and expenses, due to each class member.

71. Itemize the total estimated damages to the ERISA and non-ERISA plaintiffs and summarize the factual basis for the estimate.

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).

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

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.

75. Identify and describe the steps taken by the Firm to identify documents responsive to the corresponding Requests for Production of Documents served by the Special Master including, without limitation, the name and title of those involved, the process undertaken, the database and documents searched, and the parameters of any electronic search including date range, timekeepers and search terms.

76. Identify with specificity sufficient to constitute a valid response to a request for production of documents, any documents identified by you as responsive to the Special Master's Request for Production of Documents but withheld from production to the Special Master on grounds of any evidentiary or other privilege or otherwise including (a) the type of document; (b) its date if any; (c) any identifying marks such as bates stamp or other numeric designation; (d) the reason you withheld it from production; and (e) the current location of the document. To the extent any such document or other responsive document has been destroyed, identify (a) the type of document; (b) its date, if any; (c) the date of its destruction; (d) the circumstance thereof; and (e) the persons involved therein. For each such person, please provide their name, current or prior title or position with the Law Firm, the date, if any, of termination of employment with the Law Firm and the reason therefor, and the last known residential and business address.

77. Identify the timekeeping, accounting, and billing software systems utilized by the Law Firm to record and bill attorney time charges, costs and expenses associated with legal and other services rendered by the Law Firm in connection with the SST Litigation and the persons within the Law Firm with the most knowledge and responsibility for the system and operation.

Date: May 18, 2017

Respectfully submitted,

SPECIAL MASTER HONORABLE
GERALD E. ROSEN (RETIRED),
By his Attorneys,

William F. Sinnott (BBO #547423)
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CERTIFICATE OF SERVICE

I, William F. Sinnott, hereby certify that I have caused a copy of the foregoing document to be served upon Richard M. Heimann, Esquire, Lieff Cabraser Heimann & Bernstein, LLP, 275 Battery Street, 29th Floor, San Francisco, CA 94111, by electronic mail and first class mail, postage prepaid, this 18th day of May, 2017.

William F. Sinnott

EXHIBIT D

From: William Sinnott [mailto:wsinnott@dbslawfirm.com]
Sent: Tuesday, May 23, 2017 5:06 PM
To: Heimann, Richard M.
Cc: Fineman, Steven E.; Lukey, Joan; Kelly, Brian; Fuller, Anthony E.; Elizabeth McEvoy
Subject: Revised RFPs & Ints. for Lieff

Richard:

As Joan Lukey likely informed you, we had a very productive meeting with Joan and Justin yesterday in which we significantly narrowed the scope of the written discovery served on May 18, 2017. In an effort to alleviate the burden on the firms and prioritize the information we need in advance of the depositions (as scheduled) in June, we've adjusted the "due date" for several of the requests—reflecting a new, tiered schedule—as well as eliminated a significant amount of interrogatories and requests for production altogether. As indicated in the attached annotated version of the May 18 Interrogatories and Requests for Production, we've categorized the requests into those due on June 1, 2017, those due on June 9, 2017, and those due on July 10, 2017. Please see below additional clarification based on our discussion yesterday with Labaton's counsel.

In the event that the Firm objects to any of the revised interrogatories and/or RFPs, for any reason, please send us an email detailing the nature of each request and corresponding Ints/RFP by no later than **Friday, May 26, 2017**. We will consider all timely objections and do our best to further narrow the scope of eliminate extraneous information, if appropriate.

Finally, if the Firm has already produced information requested as part of its prior document productions, please respond in writing with the specific date(s) or production and Bates nos. of all responsive documents. Such information need not be produced a second time.

Interrogatories

No. 2- Stricken in its entirety for now. The Special Master reserves the right to propound additional discovery specifically to address the subject matter, experience and/or expertise of the Law Firm prior to its involvement in the SST Litigation, involving FX-based claims.

No. 4- Stricken in its entirety for now. The Special Master reserves the right to propound additional discovery specifically to address potential double-billing of Staff Attorney and attorney time between the SST Litigation and other, concurrent litigations in which the Firm was involved.

Nos. 10-11, 13- Strike the portion of each interrogatory seeking a description of the "basic substance" of certain communications referenced therein.

No. 10- Please describe the Firm's understanding of the role played by the listed government agencies.

No. 14- Please provide an overview of the litigation strategy throughout the course of the litigation. To the extent that strategy changed, please identify generally the time period or relevant event (i.e. Lobby Conference, Motion to Dismiss, access to State Street production) that caused a change in said strategy.

Nos. 15-16- If the answer is "none," so state in your response.

No. 18- Figures need not be exact; approximations or ranges for the total number of pages or GB are acceptable. The reference to "general description of the information contained in the production" may include brief descriptions for the various categories of documents, such as "real time trading transactions"; "internal State Street emails between traders and compliance"; and/or "foreign exchange market spreadsheets of exchange rates."

Nos. 19/22/29- To the extent these interrogatories overlap in substance, the Firm need not answer twice. However, insofar as one or more interrogatories seeks information that is not included in the other two, please respond to all sub-questions presented.

No. 33- Reference to "all other matters in which the Firm entered into a similar arrangement [] to share costs with other firms" refers to any other matters in which the firm agreed to share the costs of the time spent/billed by the Firm's staff attorneys with another firm, and sought reimbursement directly or indirectly from that firm for staff attorney time. If none, so state in your response.

No. 46- Relates to any situation, whether or not arising to a true "dispute," in which the Firm ended representation of a client/class representative prematurely or otherwise before the anticipated conclusion of a matter, whether due to insistence of the client/class representative or the Firm, and where the Firm sought payment from the client or the client paid for the work already performed by the Firm. If an hourly rate was paid, please identify that rate. If another sum was paid, please provide that figure and the basis for that payment.

No. 47- Relates principally to hourly rates listed on the Firm's fee petitions, and also includes any other instance in which the Firm has represented a client/class representative on a non-hourly basis, and then sought reimbursement from another party or the Court that is not captured in a fee petition.

No. 54- Interrogatory seeks identification/description only of those instances in the State Street Litigation where the Firm billed an attorney at a higher or lesser rate than the rate determined by the Firm. Please explain the deviation in any such instance.

No. 56/60- To the extent these interrogatories overlap in substance, the Firm need not answer twice. However, to the extent No. 60, seeking information specifically relating to the Firm's review or involvement in Thornton's Fee Petition, goes beyond the scope of No. 56, please answer all sub-questions presented.

RFPs

No. 1- A hard drive containing the database is acceptable. If you contend such production is barred under the terms of the protective order entered into with State Street's counsel during the State Street Litigation, please respond stating with specificity the nature of such an objection.

No. 2- As discussed yesterday, production of all documents marked "hot" or "smoking hot" in the Catalyst database is sufficient; the phrase "bearing on material issues" is, therefore, stricken.

No. 3: Request seeks documents relating to representation of class representatives in the State Street Litigation only. The reference to all documents "referring to, relating to, or evidencing terms of the law Firm's representation of class

representatives" relates to any written communications, emails, notes that set out the terms of an agreement that is not otherwise reflected in a formal written agreement previously produced, or any documents that contain terms that amend a formal agreement and is not otherwise contained in another written agreement produced therein.

Nos. 4-5: Requests seek only those documents referenced therein from 2009-2011, representing the general timeframe with Lieff first became involved in the State Street Litigation.

Nos. 8-9: Requests seeks only those documents referenced therein from 2010-2011 and 2015-2016. To the extent you object to producing communications relating to the review and adjustment of annual billing rates during this time frame, please respond stating with specificity the nature of such objection.

No. 10- The Firm need only produce those emails and/or other communications or documents soliciting opinions and/or retaining an expert to provide an opinion as described therein, as well as the opinions or work product received.

No. 15- To the extent that a single 1099 or W-2 captures all compensation paid by the Firm to a Staff Attorney, the Firm need not produce the individual paystubs reflected on those documents. However, in the event a Staff Attorney received individual or intermittent payments that are not reflected on a 1099 and/or W-2, please produce both the appropriate 1099/W-2 and all records of payment made, in order to provide a complete record of all payments made in connection with that staff attorney's work on the State Street Litigation.

No. 16- If the Firm is unable to complete the search due to a large volume of responsive documents, please respond with the proposed search terms and total number of "hits." Should this be the case, we can provide a list of timekeepers and/or narrowed search terms.

No. 19- If Lieff did not retain an expert, so state in your response.

No. 21- If the Firm is unable to complete the search due to a large volume of responsive documents, please respond with the proposed search terms and total number of "hits." Should this be the case, we can provide a list of timekeepers and/or narrowed search terms.

No. 32- Please search and produce all responsive documents for the attorney deponents (excluding staff attorneys) who will testify on June 5, 14, or 16 by June 9. All other responsive documents located should be produced no later than July 10.

Bill

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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

SPECIAL MASTER HONORABLE GERALD E. ROSEN'S (RET.) FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS TO LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Pursuant to Rule 53(c) of the Federal Rules and the Court's March 8, 2017 Order (pp. 3-4), Special Master Honorable Gerald E. Rosen (Retired), by his undersigned counsel, hereby requests that Lieff Cabraser Heimann & Bernstein, LLP produce the documents described below for inspection and copying at the offices of Donoghue Barrett & Singal, P.C., One Beacon Street, Suite 1320, Boston, Massachusetts 02108, within fourteen (14) days from the date of service hereof.

DEFINITIONS

1. The terms "you", "your", "the Firm", and "the Law Firm" refer to Lieff Cabraser Heimann & Bernstein, LLP, and all of its employees, contractors, affiliates, agents, counsels, and representatives.

2. The term "Thornton" refers to Thornton Law Firm, LLP, formerly known as Thornton & Naumes, LLP, and all employees, agents, counsels, attorneys, and representatives.

3. The term "Labaton" or "Labaton Sucharow" refers to Labaton Sucharow LLP, and all of its employees, contractors, affiliates, agents, counsels, and representatives.

4. The term "Plaintiffs' Law Firms" refers to Labaton Lieff, and/or Thornton, and their respective employees, contractors, affiliates, agents, counsels, and representatives, collectively and/or individually.

5. The term "ERISA firms" or "ERISA counsel" refers to Brian McTigue and/or the McTigue Law Firm, the Law Offices of Keller Rohrback, LLP, Zuckerman Spaeder, LLP, Beins Alexrod, P.C., and any firms retained by one or more of the above, and all employees, agents, counsels, attorneys, and representatives.

6. The term "ARTRS" refers to the Arkansas Teacher Retirement System and/or its Executive Director, George Hopkins, Esq.

7. The term "State Street Litigation", "SST Litigation" or "Litigation" refers to *Arkansas Teacher Retirement System, et al. v. State Street Corporation, et al.*, C.A. No. 1:11-cv-10230-MLW, pending in the United States District Court for the District of Massachusetts.

8. The term "State Street Document Review", "SST Document Review" or "Document Review" refers to the Law Firm's review of hard copy and electronic documents produced as part of discovery in *Arkansas Teacher Retirement System, et al. v. State Street Corporation, et al.*, C.A. No. 1:11-cv-10230-MLW, pending in the United States District Court for the District of Massachusetts.

9. The term "State Street" refers to State Street Bank and Trust Company and/or State Street Global Markets, defendants in the SST Litigation.

10. The term "settlement in principle" refers to the settlement agreement reached in substance between counsel by and through mediation.

11. The term "Court" refers to the United States District Court for the District of Massachusetts.

12. The term "Fee Petition" or "Fee Application" refers 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, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs* (Docket #104), and Exhibits 1-32 attached thereto, filed with the Court in the State Street Litigation. In particular, "Fee Petition" in conjunction with one or more of the individual firms, refers to the respective Exhibit (and exhibits attached thereto) in which an individual law firm sought approval for payment of its respective fee and expenses

incurred in the SST Litigation, including all declarations, affidavits, and/or the Lodestar reports filed therewith.

13. The term "Motion for Attorneys' Fees" refers to Lead Counsel's Motion for An Award of Attorneys' Fees and Payment of Litigation Expenses, including the Memorandum in Support and exhibits, filed with the Court on or about September 15, 2016 and October 21, 2016, respectively (Docket #102, 108).

14. The term "Final Settlement" refers to the Stipulation and Agreement of Settlement dated July 26, 2016 (Docket #89).

15. The term "Fee Award" refers to a certain award of attorneys' fees of $74,541,250.00 and expenses and costs of $1,257,697.94, as approved by the Court in the Lawsuit by Order dated November 2, 2016.

16. The term "November 10, 2016 Letter" refers to the letter from David Goldsmith to Judge Wolf dated November 10, 2016 (Exhibit A to Docket #117), advising the Court of inadvertent errors in the Fee Petitions and Fee Order.

17. The term "December 17, 2016 Article" refers to the Boston Globe article entitled *Critics hit law firms' bills after class-action lawsuits*, published on or about December 17, 2016.

18. The term "hourly rates charged" refers to the hourly billing rates corresponding to work of an individual attorney or staff member of the firm, appearing on a fee petition submitted to the Court or otherwise charged to a client for work performed on a legal matter, including the rates listed on the Fee Petitions submitted in the SST Litigation.

19. The term "Staff Attorneys" refers to licensed attorneys working on a part-time or full-time basis for the Law Firm, but who are not deemed "associates" or otherwise on a traditional partnership track.

20. The term "hourly clients" refers to all past, present, and prospective clients who agree to pay and/or are charged for legal services rendered on an hourly basis, notwithstanding the actual amount paid or collected.

21. The term "non-hourly clients" refers to all past, present, and prospective clients who do not pay for legal services on an hourly rate, such as clients paying a flat fee, retained through a contingency arrangement and/or class action litigation, or other non-hourly fee structure, notwithstanding the actual amount paid or collected.

22. Any word written in the singular also includes the plural and vice-versa.

23. In case of doubt as to the scope of a clause including "and," "or," "any," "all," "each," or "every," the intended meaning is inclusive rather than exclusive.

24. The term "any" and the term "all" are intended to mean "any and all."

25. As used herein, the term "or" and the term "and" shall mean "and/or" and vice-versa.

26. As used herein, the terms "relating to" or "referring to" or "concerning" or "constituting" or the like mean and include all documents that in any manner or form are relevant in any way to or bear upon the subject matter in question, including, without limitation, all documents which contain, record, reflect, summarize, evaluate, comment upon, transmit, refer to, or discuss that subject matter or that in any manner state the background of, or were the basis or bases for, or that record, evaluate comment upon, or were referred to, relied upon, utilized, generated, transmitted, or received in arriving at, your conclusions, opinions, estimates, calculations, positions, decisions, beliefs, assertions or allegations, that undermine, contradict, or conflict with your conclusions, opinions, calculations, estimates, positions, beliefs, assertions, or allegations, concerning the subject matter in question.

27. The term "date" means the exact day, month, and year, if ascertainable, or the best approximation thereof if not.

28. The term "communication" as used herein includes, without limitation, the following: conversations, telephone conversations, e-mails, text messages, social media communications, and other electronic transmissions of any kind, statements, discussions, debates, arguments, disclosures, interviews, consultation and every other manner of oral utterance, correspondence, or electronic or written transmittals of information or messages of any kind.

29. The term "document" shall mean those things described in Rule 34(a) of the Federal Rules of Civil Procedure. The terms "document" and "documents" are used herein in the broadest possible sense and mean written, typed, printed, recorded or graphic matter, however produced or reproduced of any kind and description, and whether an original, master, duplicate or copy, including, but not limited to, e-mails, papers, notes, accounts, books, advertisements, letters, memoranda, notes of conversations, contracts, agreements, drawings, telegrams, tape recordings, communications (as defined in paragraph 28 hereof), including inter-office and intra-office memoranda reports, studies, working papers, corporate records, minutes of meetings, notebooks, bank deposit slips, bank checks, canceled checks, diaries, diary entries, appointment books, desk calendars, photographs, transcriptions or sound recordings or any type of personal or telephone conversations or negotiations, meetings or conferences, or things similar to any of the foregoing, and to include any data, information or statistics contained within any data storage modules, tapes, discs or other memory device, or other information retrievable from storage systems, including but not limited to, computer-generated reports and printouts. If any document has been prepared in multiple copies which are not identical, each modified copy or

non-identical copy is a separate "document." The word "document" also includes data compilations from which information can be obtained and translated, if necessary, by the respondent through detection devices in a reasonably usable form.

30. The term "draft" shall mean any earlier, preliminary, preparatory, proposed, or tentative version of all or part of a document, whether or not such draft was superseded by a later draft or final document and whether or not the terms of the draft are the same or different from the terms of the final document.

INSTRUCTIONS

A. Unless otherwise specified, these requests seek documents for the period from January 1, 2010 until the present.

B. This document request ("Request") requires you to produce all documents called for herein that were created or originated by you, or that came into your possession, custody or control, from all files or other sources that contain responsive documents, wherever located and whether active, in storage, or otherwise.

C. This Request shall be deemed to include any document now or at any time in your possession, custody, or control. A document is deemed to be in your possession, custody, or control if it is in your physical custody, or if it is in the physical custody of any other person and you: (i) own such document in whole or in part; (ii) have a right, by contract, statute, or otherwise, to use, inspect, examine, or copy such document on any terms; (iii) have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or (iv) as a practical matter, have been able to use, inspect, examine, or copy such document when you sought to do so. If any requested document was, but no longer is, in your control, state the disposition of each such document.

D. The obligation to produce the documents specified below is of a continuing nature; your production is to be supplemented if at any time you acquire possession, custody, or control of any additional responsive documents, or otherwise discover additional responsive documents, between the time of initial production and conclusion of the investigation, to the fullest extent required by the Federal Rules of Civil Procedure, the March 8, 2017 Court order, and the Local Rules of this Court.

E. Where only a portion of a document relates or refers to the subject indicated, the entire document is to be produced nevertheless, along with all attachments, appendices and exhibits.

F. Each document produced in response to the Requests below should be clearly categorized to indicate which Request(s) it is responsive to.

G. If any document or portion thereof is withheld under a claim of privilege, you shall produce so much of the document as is not subject to the possible claim of privilege, and shall furnish a statement, signed by an attorney representing you, which identifies each document or portion thereof for which a privilege is claimed, including the following information:

(i) The date of the document;

(ii) The name and title of the person who sent, authored, prepared, signed, or originated the document, or of the person who knows about the information contained therein;

(iii) The name and title of the recipient of the document;

(iv) All persons to whom copies of the document were furnished, along with such persons' job titles or positions;

(v) A brief description of the subject matter or nature of the document sufficient to assess whether the assertion of privilege is valid;

(vi) The specific basis upon which the privilege is claimed;

(vii) With respect to any claim of privilege relating to an attorney, or action or advice or work product of an attorney, the identity of the attorney involved; and

(viii) The paragraphs of this request to which such document responds.

H. All documents shall be produced as they are kept in the ordinary course of business and in their original file folders with any identifying labels, file markings, or similar identifying features. If there are no documents responsive to a category specified below, you shall so state in a writing produced at the time and place that documents are demanded to be produced by this request.

I. Documents created or stored electronically must be produced in their original electronic format, and not printed to paper or PDF. All electronically stored information ("ESI") shall be produced in electronic form (the "production set"). Each document will have its own unique identifier ("Bates number"), which must be consistently formatted across the production, comprising of an alpha prefix and a fixed length number of digits (e.g., "PREFIX0000001"). The production set shall consist of, and meet, the following specifications:

1. Image Files. All ESI will be rendered to single-page, black and white, Group IV *tagged image file* (".tif" or ".tiff") images with a resolution of 300 dpi, the file name for each page is named after its corresponding Bates number. Records in which a color copy is necessary to interpret the document (e.g., photographs, presentations, AUTOCAD, etc.) will be rendered to higher resolution, single-page *joint photographic experts group* (".jpg" or ".jpeg") format. Endorsements must follow these guidelines:

    a. Bates numbers must be stamped on the lower right hand corner of all images.

    b. Confidentiality must be stamped on the lower left hand corner of all images.

    c. Other pertinent language may be stamped on the bottom center, or top of the images, as deemed necessary.

2. Load Files. All ESI must be produced with appropriate data load files, denoting logical document boundaries. The following files should be included within each production set.

    a. A Concordance delimited ASCII text file (".dat").

i. The .dat file will contain metadata from the original native documents, wherein the header row (*i.e.*, the first line) of the .dat file must identify the metadata fields.

ii. The .dat file must be delimited with the standard Concordance delimiters (the use of commas and quotes as delimiters is not acceptable):

ASCII 020 [¶] for the comma character;
ASCII 254 [þ] for the quote character; and
ASCII 174 [®] for new line.

iii. All attachments, or *child* records, should sequentially follow the *parent* record.

iv. The following fields and metadata will be produced:

Beginning Bates; Ending Bates; Beginning Bates Attachment; Ending Bates Attachment; Custodian; File Name; From; Recipient; CC; BCC; Subject; Date Sent; Time Sent; Last Modified Date; Last Modified Time; Author; Title; Date Created; Time Created; Document Extension; Page Count; MD5Hash; Text Path; and Native File Path.

b. Image cross-reference files, *Opticon* image file (".opt") and *IPRO View Load* file (".lfp"), which link images to the database and identifies appropriate document breaks.

J. If any document requested herein has been lost, discarded, or destroyed, that document so lost, discarded, or destroyed shall be identified in writing (produced at the time and place that documents are demanded to be produced by this request) as completely as possible, together with the following information: date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.

DOCUMENTS REQUESTED

1. The 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. **[JULY 10]**

2. All so-called "hot docs," as understood or identified by the Law Firm~~, and any other documents or information identified during the SST Litigation bearing on the material issues in the Litigation, including but not limited to liability and damages~~. **[JUNE 9]**

3. All engagement letters, fee agreements, retention letters, and/or other documents referring to, relating to, or evidencing terms of the Law Firm's participation in the SST Litigation and/or representation of class representatives. **[JUNE 9]**

4. All 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 hourly clients, from ~~2008 to the present~~ ***2009-2011***. **[JULY 10]**

5. All 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 non-hourly clients, from ~~2008 to the present~~ ***2009-2011***. **[JULY 10]**

~~6. All documents and/or communications relating to how the Law Firm records, accounts for and/or seeks reimbursement for hours billed by Staff Attorneys in other class action or contingency cases, including the hourly rates the Law Firm would charge if successful, from 2010 to the present.~~

7. Copies of all billing rate tables, spreadsheets, fee binders, or other collection of the Law Firm's annual billing rates, from 2010 to the present.

8. All minutes, notes, recordings, memoranda or other documents relating to or created by the Law Firm's Managing Partner or Executive Committee during meetings to determine annual billing rates, from ~~2008 to the present~~ ***2010-2011 and 2015-2016***. **[JUNE 9]**

9. All documents and/or communications between and among the Firm's Managing Partner and the Firm's Executive Committee relating to review and adjustment of annual billing rates, from ~~2008 to the present~~ ***2010-2011 and 2015-2016***. **[JUNE 9]**

10. All documents and/or communications relating to the Law Firm's internal classification of costs and expenses, including but not limited to any ethical, legal, or factual opinions solicited by the firm by third parties regarding the classification of Staff Attorneys as fees vs. expenses. **[JUNE 1]**

~~11. A complete set of time records for all attorneys, including Staff Attorneys, and other Law Firm staff who worked on or contributed to the SST Litigation, including but not limited to hand-written time sheets/ledgers, emails, electronic entries, pre-bills, and/or client bills, including the hourly rate billed and/or corresponding to the hours recorded.~~

~~12. All documents referring to, relating to, evidencing or constituting the basis for and amounts of any costs and expenses billed, incurred or charged by the Law Firm for legal or other services rendered in connection with the SST Litigation including but not limited to documents pertaining to the terms under which Staff Attorneys and/or third parties provided services to the Law Firm in the Lawsuit.~~

~~13. All documents and/or communications relating to or evidencing the Law Firm's use of Catalyst in connection with the SST Document Review, including all records of time spent in the Catalyst database, costs incurred, and coding of electronic documents.~~

~~14. All W-2s, 1099s, paystubs, or other documentation of payments made to the Firm attorneys and non-legal staff assigned to or who contributed to the SST Litigation, for work performed on the Litigation.~~

15. All W-2s, 1099s, paystubs, or other documentation of payments made to the Firm's Staff Attorneys assigned to or who contributed to the SST Litigation, for work performed on the Litigation. **[JUNE 1]**

16. All documents referring to, relating to, evidencing or constituting discussions between the Law Firm and the Plaintiffs' Law Firms relating to sharing costs and/or expenses of the SST Document Review/SST Litigation, including but not limited to sharing the cost of Staff Attorneys, hosting costs for Catalyst database, and other expenses associated with conducting voluminous document review. **[JUNE 9]**

17. All agreements, contracts, and/or memorialization of an arrangement to allocate and/or share the cost of certain of the Law Firm's Staff Attorneys to Thornton, including the compensation, reimbursement, and/or invoicing of costs associated with the same. **[JUNE 9]**

18. All documents referring to, relating to, evidencing or constituting discussions with Thornton regarding Thornton's plan or intention to include Staff Attorney time as part of Thornton's Fee Petition and/or Lodestar calculation. **[JUNE 9]**

19. All expert reports, factual or legal opinions, or other work product solicited from a third-party by the Law Firm in connection with factual and/or legal issues arising in the SST Litigation, including but not limited to the foreign-exchange market, foreign-exchange trading practices, and custodial management of retirement funds. **[JULY 10]**

~~20. All documents and/or communications relating to or evidencing discussions between and among the Law Firm, the Plaintiffs' Law Firms, and/or ERISA counsel regarding the allocation of a certain percentage of the Fee Award among counsel, including but not limited to agreements to pay ERISA counsel a fixed percentage of the total Fee Award.~~

21. All documents and/or communications relating to discussions between and among the Plaintiffs' Law Firms and ARTRS/George Hopkins regarding the substantive allegations and progress of the SST litigation, including but not limited to the filing of the complaint/amended complaint, court orders, mediation, and/or the agreement to settlement in principle. **[JULY 10]**

~~22. All documents and/or communications with ARTRS/George Hopkins regarding the Final Settlement, including but not limited to the fairness of the total award for the class, payment of service award, and the Fee Award, including any allocation of those fees among counsel.~~

23. Current CVs or resumes for all Staff Attorneys who worked on or contributed to the SST Litigation/Document Review. **[JUNE 1]**

24. All written guidance, training manuals, policies/procedures, search criteria, other documents provided to the Firm's Staff Attorneys relating to the SST Document Review, including but not limited to materials related to use of Catalyst database. **[JUNE 1]**

25. All other documents relating to the SST Litigation, other than those responsive to Request No. 24 above, that the Law Firm provided to its Staff Attorneys, including but not limited to case pleadings, mediation reports, legal memoranda. **[JUNE 1]**

26. All written work product produced by Staff Attorneys assigned to the SST Litigation/SST Document Review, including all memoranda, factual summaries, deposition preparation, written analyses, witness kits, summaries. **[JUNE 1]**

27. A complete copy of the binder(s) containing discursive memoranda pertaining to the SST Litigation/SST Document Review, including all attachments. **[JUNE 1]**

~~28. All presentations, memoranda, or other submissions, including potential exhibits, any plaintiffs' counsel prepared for or submitted to the mediator, including all exhibits thereto.~~

~~29. All communications between the Law Firm and counsel for State Street relating to the SST Litigation, including but not limited to document productions, mediations, and settlement.~~

30. All communications with the U.S. Department of Labor, including all local field offices, the U.S. Attorney's Office, the U.S. Department of Justice, and/or the U.S. Securities and Exchange Commission relating to the SST Litigation. **[JULY 10]**

31. All documents and/or communications relating to the selection and staffing of Staff Attorneys on the SST Litigation/SST Document Review. **[JUNE 1]**

32. All documents and/or communications relating to the allocation of certain Staff Attorneys to Thornton under the cost-sharing agreement entered into by the Firm in or about 2014 or 2015. **[JUNE 9/JULY 10]**

~~33. All documents relating to, referring to or evidencing a secondary review or quality control process of the SST Document Review performed by the Law Firm.~~

34. All documents and/or communications between and among the Law Firm and its accounting and/or billing personnel relating to the accounting for, recording, and/or invoicing of Staff Attorneys for whom Thornton had agreed to share the costs. **[JUNE 1]**

35. All documents and/or communications between and among the Law Firm and accounting and/or billing staff requesting nullification of or requesting removal from the Fee Petition of certain hours worked by Staff Attorneys for whom another firm or Company had agreed to share the costs. **[JUNE 1]**

~~36. All documents and/or communications between and among the Law Firm and accounting and/or billing staff requesting nullification of or requesting removal from the Fee Petition of certain hours worked by Staff Attorneys for whom another firm or Company had agreed to share the costs in other class action or litigation matters.~~

~~37. All invoices, requests for payment, and/or similar documents sent to or requested by Thornton pursuant to the cost-sharing agreement between the Firm and Thornton to share the costs of certain Staff Attorneys, including all emails or other communications related to the same.~~

38. All documents relied upon by the Law Firm in preparing and filing the Firm's Fee Petition, including but not limited to expense reports, billing records, emails, invoices, and/or other records. **[JUNE 9]**

39. All documents, other than those requested in Request No. 38 above, reviewed or considered by the Law Firm in calculating the Firm's Lodestar calculation. **[JUNE 9]**

40. All documents relating to, referring to, or constituting the Law Firm's Fee Petition, including all drafts, spreadsheets, outlines, notes, emails. **[JUNE 9]**

~~41. All documents relating to, referring to, or constituting the Motion for Attorneys' Fees, including all drafts, spreadsheets, outlines, notes, emails.~~

~~42. All documents relied upon by the Law Firm in preparing and filing the Motion for Attorneys' Fees.~~

~~43. All communications between and among the Law Firm, the Plaintiffs' Law Firms, and the ERISA firms, relating to preparation of the Motion for Attorneys' Fees and/or the Fee Petitions filed in the SST Litigation.~~

44. All documents and/or communications relating to the discovery of billing errors disclosed in the November 10, 2016 Letter filed with the Court, including but not limited to communications between and among you, the Plaintiffs' Law Firms, class representatives, and/or the ERISA firms. **[JUNE 9]**

~~45. All documents, including notes, outline, drafts and exhibits, explaining or attempting to correct any part of the Fee Petition(s).~~

~~46. All documents illustrating, demonstrating, or establishing any errors you or anyone identified in any part of the Fee Petition(s).~~

47. All documents relating to, referring to, evidencing, or constituting the November 10, 2016 Letter, including all drafts, outlines, notes, and communications relating to the filing of that correspondence. **[JUNE 9]**

~~48. All documents and/or communications relating to, referring to or evidencing corrective actions or subsequent review taken by the Law Firm after discovery of the billing errors disclosed in the November 10, 2016 Letter.~~

49. All documents and/or communications relating to the December 17, 2016 Article, including but not limited to communications between and among the Law Firm, the Plaintiffs' Law Firms, class representatives, and/or the ERISA firms. **[JUNE 9]**

50. All documents relating to Michael Bradley's involvement in the SST Litigation/SST Document Review, including but not limited to communications with Mr. Bradley and all documents relating to or referring to an agreement between Mr. Bradley and Thornton to participate in the SST Document Review. **[JUNE 9]**

51. All documents relating to, referring to or evidencing payments made to Michael Bradley in connection with his work on the SST Litigation/SST Document Review. **[JUNE 9]**

52. All written work product produced by Michael Bradley as part of his involvement in the SST Litigation/SST Document Review, including all memoranda, factual summaries, deposition preparation, written analyses, witness kits, summaries. **[JUNE 9]**

53. All documents you may contend support your Fee Petition for reimbursement of fees and/or expenses, which you have not produced thus far. **[JUNE 9]**

Date: May 18, 2017

SPECIAL MASTER HONORABLE GERALD E. ROSEN (RETIRED),

By his Attorneys,

William F. Sinnott (BBO #547423)
Elizabeth J. McEvoy 9BBO #683191)
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CERTIFICATE OF SERVICE

I, William F. Sinnott, hereby certify that I have caused a copy of the foregoing document to be served upon Richard M. Heimann, Esquire, Lieff Cabraser Heimann & Bernstein, LLP, 275 Battery Street, 29th Floor, San Francisco, CA 94111, by electronic mail and first class mail, postage prepaid, this 18th day of May, 2017.

_____

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

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

Pursuant to Rule 53(c) of the Federal Rules of Civil Procedure and the Court's March 8, 2017 Order (pp. 3-4), Special Master Honorable Gerald E. Rosen's (Retired), by his undersigned counsel, hereby propounds the following Interrogatories upon Lieff Cabraser Heimann & Bernstein, LLP. The Special Master requests that Lieff Cabraser Heimann & Bernstein, LLP answer the Interrogatories herein under oath and provide responses within fourteen (14) days from the date of service hereof, to: William F. Sinnott, Esq., Donoghue Barrett & Singal, P.C., One Beacon Street, Suite 1320, Boston, Massachusetts 02108.

DEFINITIONS

1. The term "you", "your", "the Firm", and "the Law Firm" refer to Lieff Cabraser Heimann & Bernstein, LLP, and all of its employees, contractors, affiliates, agents, counsels, and representatives.

2. The term "Thornton" refers to Thornton Law Firm, LLP, formerly known as Thornton & Naumes, LLP, and all employees, agents, counsels, attorneys, and representatives.

3. The term "Labaton" or "Labaton Sucharow" refers to Labaton Sucharow LLP, and all of its employees, contractors, affiliates, agents, counsels, and representatives.

4. The term "Plaintiffs' Law Firms" refers to Labaton, Lieff, and/or Thornton, and their respective employees, contractors, affiliates, agents, counsels, and representatives, collectively and/or individually.

5. The term "ERISA firms" or "ERISA counsel" refers to Brian McTigue and/or the McTigue Law Firm, the Law Offices of Keller Rohrback, LLP, Zuckerman Spaeder, LLP, Beins Alexrod, P.C., and any firms retained by one or more of the above, and all employees, agents, counsels, attorneys, and representatives.

6. The term "ARTRS" refers to the Arkansas Teacher Retirement System and/or its Executive Director, George Hopkins, Esq.

7. The term "State Street Litigation", "SST Litigation" or "Litigation" refers to *Arkansas Teacher Retirement System, et al. v. State Street Corporation, et al.*, C.A. No. 1:11-cv-10230-MLW, pending in the United States District Court for the District of Massachusetts.

8. The term "State Street Document Review", "SST Document Review" or "Document Review" refers to the Law Firm's review of hard copy and electronic documents produced as part of discovery in *Arkansas Teacher Retirement System, et al. v. State Street Corporation, et al.*, C.A. No. 1:11-cv-10230-MLW, pending in the United States District Court for the District of Massachusetts.

9. The term "State Street" refers to State Street Bank and Trust Company and/or State Street Global Markets, defendants in the SST Litigation.

10. The term "settlement in principle" refers to the settlement agreement reached in substance between counsel by and through mediation.

11. The term "Court" refers to the United States District Court for the District of Massachusetts.

12. The term "California Action" refers to the qui tam lawsuit(s) originally filed under seal in California and other states against State Street that was unsealed on or about October 20, 2009 by the intervention of the Attorney General for the State of California.

13. The term "BNY Mellon Action" refers to the investigation and prosecution of the multidistrict litigation entitled *In re Bank of New York Mellon Corp.* and related actions, including but not limited to Civil Action 12-MD-02335 filed in the United States District Court for the Southern District of New York.

14. The term "Fee Petition" or "Fee Application" refers 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, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs (Docket #104), and Exhibits 1-32 attached hereto, filed with the Court in the State Street Litigation. In particular, "Fee Petition" in conjunction with one or more of the individual firms, refers to the respective Exhibit (and exhibits attached thereto) in which an individual law firm sought approval for payment of its respective fee and expenses incurred in the SST Litigation, including all declarations, affidavits, and/or the Lodestar reports filed therewith.

15. The term "Motion for Attorneys' Fees" refers to Lead Counsel's Motion for An Award of Attorneys' Fees and Payment of Litigation Expenses, including the Memorandum in Support and exhibits, filed with the Court on or about September 15, 2016 and October 21, 2016, respectively (Docket #102, 108).

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19. The term "December 17, 2016 Article" refers to the Boston Globe article entitled *Critics hit law firms' bills after class-action lawsuits*, published on or about December 17, 2016.

20. The term "hourly rates charged" refers to the hourly billing rates corresponding to work of an individual attorney or staff member of the firm, appearing on a fee petition submitted

to the Court or otherwise charged to a client for work performed on a legal matter, including the rates listed on the Fee Petitions submitted in the SST Litigation.

21. The term "Staff Attorneys" refers to licensed attorneys working on a part-time or full-time basis for the Law Firm, but who are not deemed "associates" or otherwise on a traditional partnership track.

22. The term "hourly clients" refers to all past, present, and prospective clients who agree to pay and/or are charged for legal services rendered on an hourly basis, notwithstanding the actual amount paid or collected.

23. The term "non-hourly clients" refers to all past, present, and prospective clients who do not pay for legal services on an hourly rate, such as clients paying a flat fee, retained through a contingency arrangement and/or class action litigation, or other non-hourly fee structure, notwithstanding the actual amount paid or collected.

24. Any word written in the singular also includes the plural and vice-versa.

25. In case of doubt as to the scope of a clause including "and," "or," "any," "all," "each," or "every," the intended meaning is inclusive rather than exclusive.

26. The term "any" and the term "all" are intended to mean "any and all."

27. As used herein, the term "or" and the term "and" shall mean "and/or" and vice-versa.

28. As used herein, the terms "relating to" or "referring to" or "concerning" or "constituting" or the like mean and include all documents that in any manner or form are relevant in any way to or bear upon the subject matter in question, including, without limitation, all documents which contain, record, reflect, summarize, evaluate, comment upon, transmit, refer to, or discuss that subject matter or that in any manner state the background of, or were the basis or bases for, or that record, evaluate comment upon, or were referred to, relied upon, utilized,

generated, transmitted, or received in arriving at, your conclusions, opinions, estimates, calculations, positions, decisions, beliefs, assertions or allegations, that undermine, contradict, or conflict with your conclusions, opinions, calculations, estimates, positions, beliefs, assertions, or allegations, concerning the subject matter in question.

29. The term "date" means the exact day, month, and year, if ascertainable, or the best approximation thereof if not.

30. The term "communication" as used herein includes, without limitation, the following: conversations, telephone conversations, e-mails, text messages, social media communications, and other electronic transmissions of any kind, statements, discussions, debates, arguments, disclosures, interviews, consultation and every other manner of oral utterance, correspondence, or electronic or written transmittals of information or messages of any kind.

31. The term "document" shall mean those things described in Rule 34(a) of the Federal Rules of Civil Procedure. The terms "document" and "documents" are used herein in the broadest possible sense and mean written, typed, printed, recorded or graphic matter, however produced or reproduced of any kind and description, and whether an original, master, duplicate or copy, including, but not limited to, e-mails, papers, notes, accounts, books, advertisements, letters, memoranda, notes of conversations, contracts, agreements, drawings, telegrams, tape recordings, communications (as defined in paragraph 30 hereof), including inter-office and intra-office memoranda reports, studies, working papers, corporate records, minutes of meetings, notebooks, bank deposit slips, bank checks, canceled checks, diaries, diary entries, appointment books, desk calendars, photographs, transcriptions or sound recordings or any type of personal or telephone conversations or negotiations, meetings or conferences, or things similar to any of the foregoing, and to include any data, information or statistics contained

within any data storage modules, tapes, discs or other memory device, or other information retrievable from storage systems, including but not limited to, computer-generated reports and printouts. If any document has been prepared in multiple copies which are not identical, each modified copy or non-identical copy is a separate "document." The word "document" also includes data compilations from which information can be obtained and translated, if necessary, by the respondent through detection devices in a reasonably usable form.

32. The term "draft" shall mean any earlier, preliminary, preparatory, proposed, or tentative version of all or part of a document, whether or not such draft was superseded by a later draft or final document and whether or not the terms of the draft are the same or different from the terms of the final document.

INSTRUCTIONS

A. Pursuant to Rule 53(c) of the Federal Rules of Civil Procedure and the Court's March 8, 2017 Order (pp. 3-4), you are required to answer the following Interrogatories under oath and within 14 days, or within the time otherwise required by Court order.

B. For each of the Interrogatories listed below, please include the full name(s) of all persons from the Law Firm (attorneys, staff, agents, consultants, or affiliates) who have knowledge of the information provided.

C. These Interrogatories are deemed to be continuing and to require supplemental responses, if you obtain additional, contradictory, or different information. Such supplemental answers shall be filed promptly upon the discovery by you of such supplemental information. Each Interrogatory is to be answered separately and as completely as possible. The fact that an investigation is continuing and discovery is not complete shall not be used as a reason for failure to answer any Interrogatory as fully as possible.

D. If you refuse to answer any Interrogatory or any part thereof on the grounds of privilege, please identify the claimed privilege (i.e., attorney-client) and the nature of any information you refuse to disclose, referring specifically to the Interrogatory or any part thereof to which the claimed privilege applies, the form in which said information exists, and the grounds for the claimed privilege.

E. If the answer to all or any part of an Interrogatory is not presently known by or available to you, include a statement to that effect, specifying the portion of the Interrogatory which cannot be completely answered.

INTERROGATORIES

1. Describe each of the Law Firm's practice area(s), including areas of specialty, special services offered, the total number of attorneys and staff, and a brief description of any representative matters. **[JUNE 1]**

~~2. Identify all other class actions or other litigations in which the Firm has been or is currently engaged in relating to the foreign exchange market, mismanagement of retirement funds, and/or any other subject matter overlapping the allegations in the SST Litigation. Please include all such matters on which the Firm has worked, as counsel of record or otherwise, the complete case caption, the docket number, and the outcome.~~

3. Describe in detail the Firm's involvement in the California Action and in the BNY Mellon Action and how that involvement assisted the Firm in the SST Litigation. **[JUNE 1]**

~~4. Identify all other class actions or other litigation in which the Firm was engaged during the pendency of the SST Litigation. For each action:~~

~~a. Please identify the timekeepers who worked on the matter and provide their~~

~~hourly rate(s);~~

~~b. Please provide the detailed, itemized hourly billing entries for each timekeeper.~~

5. Explain how and when the Law Firm became involved in the SST Litigation, including any conversations between and among the Firm and ARTRS, the Plaintiffs' Law Firms, and/or the ERISA firms. **[JUNE 1]**

6. Describe the role played by the Law Firm in filing the substantive claims alleged in the SST Litigation, including the filing of the Complaint (Docket #1) and/or the Amended Complaint (Docket #10), a description of any legal or factual research performed, consultations with State Street, legal drafting and/or review of pleadings. **[JUNE 1]**

~~7. Summarize the factual basis for State Street's liability and your/plaintiffs' contention that State Street was legally liable for damages to the class members.~~

8. Describe the Firm's theory of damages, including an estimate of total damages to the customer and/or ERISA classes, whether this theory changed throughout the course of the SST Litigation, and if so, what factors affected the Firm's theory and total calculation of estimated damages. **[JUNE 1]**

9. Identify and describe all risk factors you considered prior to getting involved in the SST Litigation, including any "bad facts," meritorious defenses and/or unsettled legal issues, or other circumstances that affected the potential outcome and total damages recoverable in the case. **[JUNE 1]**

10. Describe the frequency and nature of communications with the Plaintiffs' Law Firms over the course of the Litigation. Please specify the attorneys with whom you dealt ~~and the basic substance of those conversations~~. **[JULY 10]**

11. Describe the role of the U.S. Department of Labor, including any field divisions or offices, the U.S. Attorney's Office, the U.S. Department of Justice, and/or the U.S. Securities and

Exchange Commission, in the SST Litigation ~~and the basic substance of the Law Firm's communications with each agency through the course of the Litigation~~. **[JULY 10]**

~~12. Explain the role played by ARTRS and/or George Hopkins in the SST Litigation, including Mr. Hopkins' substantive contributions to the pleadings and/or case strategy, and what, if any, role he had in the negotiation and mediation of the Final Settlement.~~

13. Describe the frequency and nature of communications with ERISA counsel over the course of the Litigation. Please specify the attorneys with whom you dealt ~~and the basic substance of those conversations~~. **[JULY 10]**

14. Explain the Law Firm's litigation strategy in pursuing the claims raised in the SST Litigation, including the strategy employed in mediation. Identify and describe all events that impacted or caused the Firm to change that strategy. **[JULY 10]**

15. Explain any tensions and/or adversarial positions assumed between the ERISA counsel, on the one hand, and the Plaintiffs' Law Firms, on the other, including differences in litigation strategy, legal theories, damages, and/or theories of liability asserted during the SST Litigation. **[JULY 10]**

16. Explain how the adversarial positions described above impacted or did not impact the Law Firm's strategy, including its discovery, mediation, and/or the settlement of the SST Litigation. **[JULY 10]**

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. **[JUNE 9]**

18. Describe in detail the nature and the scope of the SST Document Review, including the total number of pages and/or size of the productions, the nature and date of each document production(s) received from State Street, all other document production(s) received in connection with the Litigation, and a general description of the information contained in each production. **[JUNE 1]**

19. Describe in detail how the Law Firm conducted the SST Document Review, including how it selected and/or staffed Staff Attorneys, a description of all training binders/protocols or search terms used for Document Review, and a brief description of the tasks assigned to Staff Attorneys and any other individuals who participated, and how those tasks furthered the Firm's overall litigation strategy. **[JUNE 1]**

20. Describe how the Law Firm utilized the Catalyst database, including all persons who had access to the database, any electronic and/or technical training provided to those individuals, and a description of the information maintained in the Catalyst database during the course of the SST Document Review. **[JUNE 1]**

21. Describe in detail all documents destroyed and/or deleted from the Catalyst database, including the date, and explain why each document was deleted/destroyed. **[JUNE 1]**

22. Identify and describe any training the Firm provided to Staff Attorneys relating to the substantive allegations in the SST Litigation/SST Document Review, including addressing all legal issues, key witnesses, theories of liability, damages, and critical topics raised in the case. **[JUNE 1]**

~~23. Please list all class actions or other litigations in the past five years in which the Firm has assigned Staff Attorneys to work on the matter. For each matter, please list the full case caption, the docket number, the outcome of the case, and the hourly rates charged, if any, for each Staff Attorney who worked on the matter, and the nature of the work performed by the~~

~~assigned Staff Attorneys.~~

24. Please list the full name of each Staff Attorney who worked on the SST Litigation/Document Review. Please include for each Staff Attorney: his/her employment classification (full-time/part-time employee or independent contractor); how long he or she worked (has worked) at the Firm; the name/description of any other cases to which he or she was assigned during the pendency of SST Litigation/Document Review; whether he/she was allocated to Thornton for any portion of the SST Litigation; any prior experience in securities class action litigations, foreign-exchange trading and/or mismanagement of custodial funds; the physical location where the work was performed; and the hourly rate charged in the Fee Petition. **[JULY 10]**

25. For each of the Staff Attorneys listed above, please describe all compensation paid to the Staff Attorney and the total number of hours recorded for work on the SST Litigation/Document Review. **[JULY 10]**

26. Identify any other individuals who worked on the SST Document review who were not Staff Attorneys and explain their affiliation with the Law Firm, their employment status, and how they were compensated for their time. **[JUNE 1]**

~~27. Explain how Staff Attorneys working on the SST Litigation recorded, including through handwritten and/or interim measures, and subsequently reported their time to the Firm and what, if any, steps were taken by the Firm to review or scrutinize those hours.~~

28. Explain how the Firm supervised and/or performed quality control of the work performed by the Staff Attorneys and others who participated in the SST Document Review, including the name, title, and tasks performed by any supervising individual. **[JUNE 1]**

29. Explain in detail the job responsibilities and tasks performed by the Staff Attorneys assigned to the SST Document Review, including those Staff Attorneys allocated to

Thornton, including but not limited to, coding, deposition preparation, creation of witness kits and similar work. **[JUNE 1]**

30. Describe the process for assigning and reviewing factual, legal, and/or discursive memoranda prepared by Staff Attorneys, including how such memoranda were relevant to, used as part of the SST Litigation, and/or shared among counsel. **[JUNE 1]**

31. Describe the Firm's understanding of how fees, costs and/or expenses associated with performance of discovery in the SST Document Review would be shared among the Firm, the Plaintiffs' Law Firms, and/or the ERISA firms, including but not limited to who would be responsible for: compensating Staff Attorneys for hours worked; hosting Catalyst and/or other electronic database(s); compiling "hot docs" and other documents relative to the liability and/or damages theories; and/or other expenses associated with the SST Document Review. **[JULY 10]**

32. For each of the categories listed above, explain the Firm's understanding of how those fees, costs and/or expenses would be reported to the Court in the event of a successful verdict and/or settlement. **[JULY 10]**

33. Explain the origin of the cost-sharing agreement with Thornton through which the Firm agreed to allocate the costs associated with a certain number of Staff Attorneys to Thornton, including the names and descriptions of all other matters in which the Firm entered into a similar arrangement (whether or not documented) to share costs with other firms, prior to or after the SST Litigation. **[JUNE 1]**

34. Describe the Firm's understanding, in or about early 2015, as to how Thornton would account for the allocation/sharing of costs for certain of the Firm's Staff Attorneys in its Fee Petition, including the Firm's understanding as to which firm was responsible for reporting the total number of hours worked by those Staff Attorneys on its Fee Petition and/or Lodestar calculation. **[JUNE 1]**

~~35. Please state whether the Firm's understanding of how Thornton would account for the sharing of Staff Attorney costs has changed since 2015, and if so, when, and explain what prompted that change.~~

~~36. Explain the Firm's current understanding of the all cost-sharing agreements (formal or informal) between the Law Firm and Thornton to allocate and/or share costs for certain of the Firm's Staff Attorneys assigned to work on the SST Litigation.~~

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. **[JUNE 9]**

38. Describe in detail the process through which the Law Firm invoiced or otherwise sought reimbursement from Thornton for costs of those Staff Attorneys allocated to Thornton as part of the SST Litigation/Document Review. **[JUNE 1]**

39. Explain the Firm's process for removing time reported by Staff Attorneys allocated to Thornton for whom Thornton reimbursed the Firm, from the Firm's Fee Petition, including the role of the Firm's Accounting Department, and explain why time reported by Christopher Jordan and Jonathan Zaul for reviewing Thornton folders 2/9/15 to 4/14/15 was not removed from the Firm's timekeeping records. **[JUNE 1]**

40. Explain the Firm's process for removing time reported by Staff Attorneys allocated to Thornton for whom Thornton paid directly through a third-party staffing agency from the Firm's Fee Petition, including the role of the Firm's Accounting Department, and explain why time reported by Staff Attorneys Ann Ten Eyck and Rachel Wintterle for work performed from March through June 2015, was not removed from the Firm's timekeeping records. **[JUNE 1]**

~~41. Identify and describe all communications between the Law Firm and Thornton relating to the firms' cost-sharing agreement to share the costs of certain Staff Attorneys, including discussions regarding how those costs would be incorporated into the firms' respective Fee Petitions.~~

~~42. Identify and describe all communications between and among the Firm, Labaton, and Thornton relating to cost-sharing agreement(s) between any of the firms, including discussions regarding how those costs would be incorporated into the firms' respective Fee Petitions.~~

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. **[JUNE 9]**

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. **[JUNE 9]**

~~45. 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.~~

46. Please describe any previous matters, whether based on a contingency, hourly, or other fee arrangement, in which the Firm engaged in a fee dispute with a client or class representative prior to the conclusion of the representation. For each such matter, explain how that fee dispute was resolved and any hourly rate/quantum meruit applied for work performed. **[JULY 10]**

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. **[JUNE 9]**

48. Please explain how the process described above does or does not vary in determining billing rates charged to hourly clients and why. **[JUNE 9]**

49. Please list all of the Firm's hourly rates charged to hourly clients for each of the years 2010-2016. For each attorney, please list the relative experience level. **[JULY 10]**

50. Please list all of the Firm's hourly rates charged to non-hourly clients (whether in class action or other contingency-fee litigation) for each of the years 2010-2016. For each attorney, please list the relative experience level. **[JULY 10]**

51. Please list all of the hourly rates charged or associated with any matters in which the Firm has acted as local counsel for each of the years 2010-2016. For each attorney, please list the relative experience level. **[JULY 10]**

52. Please identify the Firm's managing partner for each of the years from 2010 to present, and list all members of the Firm's Executive Committee and describe their respective roles in determining annual rates. **[JULY 10]**

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. **[JUNE 9]**

54. Identify and describe all instances in which the Firm has billed an attorney at a lesser or higher rate than the annual rate determined by the Managing Partner, in conjunction with the Executive Committee, for a particular year and explain why that decision was made. **[JULY 10]**

55. Describe in detail the process for finalizing the term sheet and Final Settlement in the SST Litigation, including the role of the U.S. Department of Labor, U.S. Attorney's Office, U.S. Department of Justice and/or the U.S. Securities and Exchange Commission in the

negotiations. **[JULY 10]**

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). **[JUNE 9]**

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. **[JUNE 9]**

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. **[JUNE 9]**

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. **[JUNE 9]**

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. **[JUNE 9]**

61. Describe how the Law Firm and/or the Plaintiffs' Law Firms arrived at a total fee percentage roughly equal to 25% of the final Fee Award. Please explain whether the Firm prepared its Lodestar calculation to achieve a 25% award of the total settlement amount. **[JULY 10]**

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. **[JUNE 9]**

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. **[JUNE 9]**

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? **[JUNE 9]**

65. Identify, in detail, each error in your Fee Petition, 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). **[JULY 10]**

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. **[JUNE 9]**

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. **[JUNE 9]**

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). **[JUNE 9]**

69. Identify and describe all documents relied upon by the Law Firm in the drafting of the November 10, 2016 Letter. **[JUNE 9]**

~~70. State the total number of class members and the estimated recovery or settlement amounts, net of fees and expenses, due to each class member.~~

~~71. Itemize the total estimated damages to the ERISA and non-ERISA plaintiffs and summarize the factual basis for the estimate.~~

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). **[JUNE 9]**

73. Identify and explain any mistakes you have identified in the Fee Petition, Motion for Attorneys' Fees, and/or Fee Award, not described above. **[JUNE 9]**

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. **[JUNE 9]**

75. Identify and describe the steps taken by the Firm to identify documents responsive to the corresponding Requests for Production of Documents served by the Special Master including, without limitation, the name and title of those involved, the process undertaken, the database and documents searched, and the parameters of any electronic search including date range, timekeepers and search terms. **[JULY 10]**

76. Identify with specificity sufficient to constitute a valid response to a request for

production of documents, any documents identified by you as responsive to the Special Master's Request for Production of Documents but withheld from production to the Special Master on grounds of any evidentiary or other privilege or otherwise including (a) the type of document; (b) its date if any; (c) any identifying marks such as bates stamp or other numeric designation; (d) the reason you withheld it from production; and (e) the current location of the document. To the extent any such document or other responsive document has been destroyed, identify (a) the type of document; (b) its date, if any; (c) the date of its destruction; (d) the circumstance thereof; and (e) the persons involved therein. For each such person, please provide their name, current or prior title or position with the Law Firm, the date, if any, of termination of employment with the Law Firm and the reason therefor, and the last known residential and business address. **[JULY 10]**

77. Identify the timekeeping, accounting, and billing software systems utilized by the Law Firm to record and bill attorney time charges, costs and expenses associated with legal and other services rendered by the Law Firm in connection with the SST Litigation and the persons within the Law Firm with the most knowledge and responsibility for the system and operation. **[JULY 10]**

Date: May 18, 2017

Respectfully submitted,

SPECIAL MASTER HONORABLE
GERALD E. ROSEN (RETIRED),
By his Attorneys,

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Elizabeth J. McEvoy (BBO #683191)
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CERTIFICATE OF SERVICE

I, William F. Sinnott, hereby certify that I have caused a copy of the foregoing document to be served upon Richard M. Heimann, Esquire, Lieff Cabraser Heimann & Bernstein, LLP, 275 Battery Street, 29th Floor, San Francisco, CA 94111, by electronic mail and first class mail, postage prepaid, this 18th day of May, 2017.

_____
William F. Sinnott

EXHIBIT E

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 REQUEST FOR THE PRODUCTION OF DOCUMENTS

In accordance with the Federal Rules of Civil Procedure, Lieff Cabraser Heimann & Bernstein LLP ("LCHB") hereby responds to Special Master Honorable Gerald E. Rosen's (Ret.) First Request for the Production of Documents propounded on LCHB on May 18, 2017, as revised on May 23, 2017.

GENERAL OBJECTIONS

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

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

2. LCHB objects to the Requests 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 34, and by any court decisions interpreting those Rules.

3. LCHB objects to the Requests 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 actions.

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

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

6. LCHB objects to Definition No. 1 to the extent it contemplates the production of documents 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 documents.

RESPONSES TO THE REQUESTS

REQUEST FOR PRODUCTION NO. 1:

The 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. [July 10]

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

LCHB incorporates the general objections stated above. LCHB further objects to this Request on the grounds that the words "annotated" and "compiled" in the context of the Request are vague and over broad. LCHB further objects to this Request to the extent it requires LCHB to act in violation of the November 19, 2012 Order for the Production and Exchange of Confidential Information in the above-referenced actions. Subject to and without waiving those objections, as soon as practicable after LCHB is permitted to produce State Street documents in compliance with the November 19, 2012 Order for the Production and Exchange of Confidential Information, LCHB will produce a copy of the Catalyst document database used in the SST Litigation, along with information necessary for the Special Master to access the database.

REQUEST FOR PRODUCTION NO. 2:

All so-called "hot docs," as understood or identified by the Law Firm. [June 9]

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

LCHB incorporates the general objections stated above. LCHB further objects to this Request to the extent it requires LCHB to act in violation of the November 19, 2012 Order for the Production and Exchange of Confidential Information in the above-referenced actions. LCHB further objects to this Request on the grounds that the complete collection of "hot" documents sought by this Request are identifiable in the Catalyst database sought by Request No. 1, above, and cannot be produced before the Catalyst database is produced. Subject to and without waiving those objections, as soon as practicable after LCHB is permitted to produce State Street documents in compliance with the November 19, 2012 Order for the Production and Exchange of Confidential Information, LCHB will produce a copy of the Catalyst document database used in the SST Litigation, along with information necessary for the Special Master to access the database, as well "hot" documents attached to memoranda responsive to Request Nos. 26 and 27.

REQUEST FOR PRODUCTION NO. 3:

All engagement letters, fee agreements, retention letters, and/or other documents referring to, relating to, or evidencing terms of the Law Firm's participation in the SST Litigation and/or representation of class representatives. [June 9]

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

LCHB incorporates the general objections stated above. LCHB further objects to this Request on the grounds that the phrase "evidencing terms of the Law Firm's participation in the SST Litigation" is vague and over broad. Subject to and without waiving those objections, LCHB responds as follows. LCHB understands from a May 23, 2017 email from William

Sinnott to Richard M. Heimann that this Request "seeks documents relating to representation of class representatives in the State Street Litigation only." LCHB has no responsive "engagement letters, fee agreements, retention letters," or any other related documents between it and any client or any class representative in the SST Litigation.

REQUEST FOR PRODUCTION NO. 4:

All 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 hourly clients, from 2009-2011. [July 10]

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

LCHB incorporates the general objections stated above. LCHB further objects to this Request to the extent it seeks documents protected by the attorney-client privilege. LCHB further objects to this Request on the grounds that the phrase "evidencing terms" is vague, over broad and seeks information that is not relevant in this proceeding. LCHB further objects to this Request on the grounds that the time period covered by the Request, 2009-2011, is too narrow and excludes the production of relevant documents. Subject to and without waiving those objections, LCHB will produce, on or before July 10, 2017, responsive documents through 2016.

REQUEST FOR PRODUCTION NO. 5:

All 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 non-hourly clients, from 2009-2011. [July 10]

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

LCHB incorporates the general objections stated above. LCHB further objects to this Request to the extent it seeks documents protected by the attorney-client privilege. LCHB further objects to this Request on the grounds that the phrase "evidencing terms" is vague, over broad and covers information not relevant in this proceeding. LCHB further objects to this

Request on the grounds that it is unduly burdensome in that it will require LCHB to gather and produce thousands of pages of documents relating to LCHB's representation of dozens of class representatives and thousands or individual non-hourly clients, even for the limited period 2009-2011. LCHB further objects to this Request on the grounds that the time period covered by the Request, 2009-2011, seeks documents that are not relevant to the subject matter of this proceeding. Subject to and without waiving those objections, LCHB will produce representative responsive documents on or before July 10, 2017.

REQUEST FOR PRODUCTION NO. 7:

Copies of all billing rate tables, spreadsheets, fee binders, or other collection of the Law Firm's annual billing rates, from 2010 to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

LCHB incorporates the general objections stated above. LCHB further objects to this Request on the grounds that the phrase "other collection of the Law Firm's annual billing rates" is vague and unintelligible. Subject to and without waiving those objections, LCHB will produce its hourly rate schedule for the requested time period on or before June 1, 2017.

REQUEST FOR PRODUCTION NO. 8:

All minutes, notes, recordings, memoranda or other documents relating to or created by the Law Firm's Managing Partner or Executive Committee during meetings to determine annual billing rates, from 2010-2011 and 2015-2016. [June 9]

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

LCHB incorporates the general objections set forth above. LCHB further objects to this Request on the grounds that it is vague. Subject to and without waiving those objections, LCHB responds as follows. LCHB understands this Request to seek, in part, certain documents created or generated "during meetings to determine annual billing rates." LCHB has no such responsive

documents. LCHB will, however, produce otherwise responsive documents on or before June 9, 2017.

REQUEST FOR PRODUCTION NO. 9:

All documents and/or communications between and among the Firm's Managing Partner and the Firm's Executive Committee relating to review and adjustment of annual billing rates, from 2010-2011 and 2015-2016. [June 9]

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB will produce responsive documents on or before June 9, 2017.

REQUEST FOR PRODUCTION NO. 10:

All documents and/or communications relating to the Law Firm's internal classification of costs and expenses, including but not limited to any ethical, legal, or factual opinions solicited by the firm by third parties regarding the classification of Staff Attorneys as fees vs. expenses. [June 1]

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

LCHB incorporates the general objections stated above. LCHB further objects to this Request on the grounds that the phrase "internal classification of costs and expenses" is vague and unintelligible. LCHB further objects to this Request to the extent it seeks attorney work product in cases unrelated to the SST Litigation. Subject to and without waiving those objections, LCHB will produce responsive expert opinions on or before June 1, 2017.

REQUEST FOR PRODUCTION NO. 15:

All W-2s, 1099s, paystubs, or other documentation of payments made to the Firm's Staff Attorneys assigned to or who contributed to the SST Litigation, for work performed on the Litigation. [June 1]

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

LCHB incorporates the general objections stated above. LCHB further objects to this Request on the grounds that it is vague, over broad and seeks information that is not relevant to the subject matter of this proceeding. LCHB further objects to this request to the extent it seeks personal and confidential identification and financial information, including social security numbers. Subject to and without waiving those objections, LCHB will produce responsive documents on or before June 1, 2017.

REQUEST FOR PRODUCTION NO. 16:

All documents referring to, relating to, evidencing or constituting discussions between the Law Firm and the Plaintiffs' Law Firms relating to sharing costs and/or expenses of the SST Document Review/SST Litigation, including but not limited to sharing the cost of Staff Attorneys, hosting costs for Catalyst database, and other expenses associated with conducting voluminous document review. [June 9]

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

LCHB incorporates the general objections stated above. LCHB further objects to this Request on the grounds that the phrase "other expenses associated with conducting voluminous document review" is vague and unintelligible. Subject to and without waiving those objections, LCHB will produce responsive documents on or before June 9, 2017.

REQUEST FOR PRODUCTION NO. 17:

All agreements, contracts, and/or memorialization of an arrangement to allocate and/or share the cost of certain of the Law Firm's Staff Attorneys to Thornton, including the compensation, reimbursement, and/or invoicing of costs associated with the same. [June 9]

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB has produced and will produce responsive documents on or before June 9, 2017.

REQUEST FOR PRODUCTION NO. 18:

All documents referring to, relating to, evidencing or constituting discussions with Thornton regarding Thornton's plan or intention to include Staff Attorney time as part of Thornton's Fee Petition and/or Lodestar calculation. [June 9]

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB has produced and will produce responsive documents on or before June 9, 2017.

REQUEST FOR PRODUCTION NO. 19:

All expert reports, factual or legal opinions, or other work product solicited from a third-party by the Law Firm in connection with factual and/or legal issues arising in the SST Litigation, including but not limited to the foreign-exchange market, foreign-exchange trading practices, and custodial management of retirement funds.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB responds that it has no responsive documents.

REQUEST FOR PRODUCTION NO. 21:

All documents and/or communications relating to discussions between and among the Plaintiffs' Law Firms and ARTRS/George Hopkins regarding the substantive allegations and progress of the SST litigation, including but not limited to the filing of the complaint/amended complaint, court orders, mediation, and/or the agreement to settlement in principle. [July 10, 2017]

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

LCHB incorporates the general objections stated above. LCHB further objects to this Request to the extent it seeks privileged attorney-client communications and/or protected attorney work product. LCHB further objects to this Request on the grounds that it seeks

documents not relevant to the subject matter of this proceeding. Subject to and without waiving those objections, LCHB responds that it has no responsive documents.

REQUEST FOR PRODUCTION NO. 23:

Current CVs or resumes for all Staff Attorneys who worked on or contributed to the SST Litigation/Document Review. [June 1]

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB responds that it has already produced detailed biographical information for each LCHB Staff Attorney who worked on the SST Litigation, and will re-produce that information and resumes for each of those Staff Attorneys on or before June 1, 2017.[1]

REQUEST FOR PRODUCTION NO. 24:

All written guidance, training manuals, policies/procedures, search criteria, other documents provided to the Firm's Staff Attorneys relating to the SST Document Review, including but not limited to materials related to use of Catalyst database. [June 1]

RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB responds that it has already produced responsive documents and will re-produce responsive documents on or before June 1, 2017.[2]

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[1] *See* LCHB's April 5, 2017 Presentation to Special Master Judge Rosen at pages 18-40. LCHB will re-produce the Presentation with the page numbers Bates stamped, on or before June 1, 2017.

[2] *See* LCHB's April 5, 2017 Presentation to Special Master Judge Rosen at pages 41-47. LCHB will re-produce the Presentation with the page numbers Bates stamped, on or before June 1, 2017.

REQUEST FOR PRODUCTION NO. 25:

All other documents relating to the SST Litigation, other than those responsive to Request No. 24 above, that the Law Firm provided to its Staff Attorneys, including but not limited to case pleadings, mediation reports, legal memoranda. [June 1]

RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB will produce responsive documents on or before June 1, 2017.

REQUEST FOR PRODUCTION NO. 26:

All written work product produced by Staff Attorneys assigned to the SST Litigation/SST Document Review, including all memoranda, factual summaries, deposition preparation, written analyses, witness kits, summaries. [June 1]

RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

LCHB incorporates the general objections stated above. LCHB further objects to this Request to the extent it requires LCHB to act in violation of the November 19, 2012 Order for the Production and Exchange of Confidential Information in the above-referenced actions as the responsive documents contain discussion and analysis of, and include copies of, certain State Street documents subject to the Order. Subject to and without waiving those objections, LCHB will produce responsive documents on or before June 1, 2017, or as soon as practicable after LCHB is permitted to produce State Street documents in compliance with the November 19, 2012 Order for the Production and Exchange of Confidential Information.

REQUEST FOR PRODUCTION NO. 27:

A complete copy of the binder(s) containing discursive memoranda pertaining to the SST Litigation/SST Document Review, including all attachments. [June 1]

RESPONSE TO REQUEST FOR PRODUCTION NO. 27:

LCHB incorporates the general objections stated above. LCHB further objects to this Request to the extent it requires LCHB to act in violation of the November 19, 2012 Order for

the Production and Exchange of Confidential Information in the above-referenced actions as the responsive documents contain discussion and analysis of, and include copies of, certain State Street documents subject to the Order. Subject to and without waiving those objections, LCHB will produce responsive documents on or before June 1, 2017, or as soon as practicable after LCHB is permitted to produce State Street documents in compliance with the November 19, 2012 Order for the Production and Exchange of Confidential Information.

REQUEST FOR PRODUCTION NO. 30:

All communications with the U.S. Department of Labor, including all local field offices, the U.S. Attorney's Office, the U.S. Department of Justice, and/or the U.S. Securities and Exchange Commission relating to the SST Litigation. [July 10]

RESPONSE TO REQUEST FOR PRODUCTION NO. 30:

LCHB incorporates the general objections stated above. LCHB further objects to this Request on the grounds that it is over broad and seeks communications that are not relevant to the subject matter of this proceeding. Subject to and without waiving those objections, LCHB will produce responsive documents on or before July 10, 2017.

REQUEST FOR PRODUCTION NO. 31:

All documents and/or communications relating to the selection and staffing of Staff Attorneys on the SST Litigation/SST Document Review. [June 1]

RESPONSE TO REQUEST FOR PRODUCTION NO. 31:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB will produce responsive documents on or before June 1, 2017.

REQUEST FOR PRODUCTION NO. 32:

All documents and/or communications relating to the allocation of certain Staff Attorneys to Thornton under the cost-sharing agreement entered into by the Firm in or about 2014 or 2015. [June 9 / July 10]

RESPONSE TO REQUEST FOR PRODUCTION NO. 32:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB will produce responsive documents on or before June 9 and/or July 10, 2017.

REQUEST FOR PRODUCTION NO. 34:

All documents and/or communications between and among the Law Firm and its accounting and/or billing personnel relating to the accounting for, recording, and/or invoicing of Staff Attorneys for whom Thornton had agreed to share the costs. [June 1]

RESPONSE TO REQUEST FOR PRODUCTION NO. 34:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB will produce responsive documents on or before June 1, 2017.

REQUEST FOR PRODUCTION NO. 35:

All documents and/or communications between and among the Law Firm and accounting and/or billing staff requesting nullification of or requesting removal from the Fee Petition of certain hours worked by Staff Attorneys for whom another firm or Company had agreed to share the costs. [June 1]

RESPONSE TO REQUEST FOR PRODUCTION NO. 35:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB will produce responsive documents on or before June 1, 2017.

REQUEST FOR PRODUCTION NO. 38:

All documents relied upon by the Law Firm in preparing and filing the Firm's Fee Petition, including but not limited to expense reports, billing records, emails, invoices, and/or other records. [June 9]

RESPONSE TO REQUEST FOR PRODUCTION NO. 38:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB will produce responsive documents on or before June 9, 2017.

REQUEST FOR PRODUCTION NO. 39:

All documents, other than those requested in Request No. 38 above, reviewed or considered by the Law Firm in calculating the Firm's Lodestar calculation. [June 9]

RESPONSE TO REQUEST FOR PRODUCTION NO. 39:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB will produce responsive documents on or before June 9, 2017.

REQUEST FOR PRODUCTION NO. 40:

All documents relating to, referring to, or constituting the Law Firm's Fee Petition, including all drafts, spreadsheets, outlines, notes, emails. [June 9]

RESPONSE TO REQUEST FOR PRODUCTION NO. 40:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB will produce responsive documents on or before June 9, 2017.

REQUEST FOR PRODUCTION NO. 44:

All documents and/or communications relating to the discovery of billing errors disclosed in the November 10, 2016 Letter filed with the Court, including but not limited to communications between and among you, the Plaintiffs' Law Firms, class representatives, and/or the ERISA firms. [June 9]

RESPONSE TO REQUEST FOR PRODUCTION NO. 44:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB will produce responsive documents on or before June 9, 2017.

REQUEST FOR PRODUCTION NO. 47:

All documents relating to, referring to, evidencing, or constituting the November 10, 2016 Letter, including all drafts, outlines, notes, and communications relating to the filing of that correspondence. [June 9]

RESPONSE TO REQUEST FOR PRODUCTION NO. 47:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB will produce responsive documents on or before June 9, 2017.

REQUEST FOR PRODUCTION NO. 49:

All documents and/or communications relating to the December 17, 2016 Article, including but not limited to communications between and among the Law Firm, the Plaintiffs' Law Firms, class representatives, and/or the ERISA firms. [June 9]

RESPONSE TO REQUEST FOR PRODUCTION NO. 49:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB will produce responsive documents on or before June 9, 2017.

REQUEST FOR PRODUCTION NO. 50:

All documents relating to Michael Bradley's involvement in the SST Litigation/SST Document Review, including but not limited to communications with Mr. Bradley and all documents relating to or referring to an agreement between Mr. Bradley and Thornton to participate in the SST Document Review. [June 9]

RESPONSE TO REQUEST FOR PRODUCTION NO. 50:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB will produce responsive documents on or before June 9, 2017.

REQUEST FOR PRODUCTION NO. 51:

All documents relating to, referring to or evidencing payments made to Michael Bradley in connection with his work on the SST Litigation/SST Document Review.

RESPONSE TO REQUEST FOR PRODUCTION NO. 51:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB responds that it has no responsive documents.

REQUEST FOR PRODUCTION NO. 52:

All written work product produced by Michael Bradley as part of his involvement in the SST Litigation/SST Document Review, including all memoranda, factual summaries, deposition preparation, written analyses, witness kits, summaries. [June 9]

RESPONSE TO REQUEST FOR PRODUCTION NO. 52:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB responds that it has no responsive documents.

REQUEST FOR PRODUCTION NO. 53:

All documents you may contend support your Fee Petition for reimbursement of fees and/or expenses, which you have not produced thus far. [June 9]

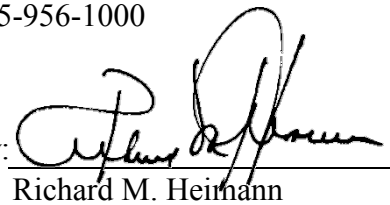
RESPONSE TO REQUEST FOR PRODUCTION NO. 53:

LCHB incorporates the general objections stated above. Subject to and without waiving those objections, LCHB responds that it has no responsive documents.

Dated: May 26, 2017

Respectfully submitted,

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

By: 
Richard M. Heimann

Attorneys for Lieff Cabraser Heimann & Bernstein, LLP

EXHIBIT F

DONOGHUE BARRETT & SINGAL

July 5, 2017

Via Email

Joan A. Lukey, Esq.
Choate, Hall & Stewart LLP
Two International Place
Boston, MA 02110

Richard M. Heimann, Esq.
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111

Brian T. Kelly, Esq.
Nixon Peabody LLP
100 Summer Street
Boston, MA 02110

Re: Special Master's Request for Supplemental Submission from Labaton Sucharow, LLP, Lieff Cabraser Heimann & Bernstein, LLP, and Thornton Law Firm, LLP

Arkansas Teacher Retirement System, et al v. State Street Corporation, et al., C.A. No. 1:11-cv-10230-MLW;

Dear Joan, Richard, and Brian:

In the course of the Special Master's investigation, the Special Master has, on several occasions, discussed with representatives of the law firms his desire to provide the participant law firms an opportunity to more formally address the factual and legal issues in this case before finalizing his report. We now invite Labaton Sucharow, Lieff Cabraser Heimann & Bernstein, and the Thornton Law Firm to provide any information they should find relevant, as such information will inform the Special Master's findings, conclusions, and recommendations presented in his Final Report and Recommendation. The above firms should submit one, consolidated response which is due to undersigned counsel by the close of business on August 1, 2017.

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DONOGHUE BARRETT & SINGAL

Areas of Concern Identified in Judge Wolf's March 8th Order

According to Judge Wolf's March 8th Memorandum and Order ("Order"), the Special Master is charged with investigating and preparing a Report and Recommendation concerning all issues relating to the attorneys' fees, expenses, and service awards previously made in this case. Specifically, the Report and Recommendation shall address, at least:

- The accuracy and reliability of the representations made by the parties in their requests for awards of attorneys' fees and expenses, including but not limited to whether counsel employed the correct legal standard and had a proper factual basis for what was represented to be the lodestar for each firm;

- The accuracy and reliability of the representations made in the November 10, 2016 letter from David Goldsmith, Esq. of Labaton Sucharow, LLC to the Court (Docket #116);

- The accuracy and reliability of the representations made by the parties requesting service awards;

- The reasonableness of the amounts of attorneys' fees, expenses, and service awards previously ordered, and whether any or all of the them should be reduced;

- Whether any misconduct occurred in connection with such awards, and if so;

- Whether it should be sanctioned (under Fed. R. Civ. P. 11(b)(3) & (c) & Mass. R. Prof. C. 3.3(a)(1) & (3)).

Order, pp. 2-3.

DONOGHUE BARRETT & SINGAL

Requests

In addition to addressing the above-described areas of inquiry, if you so desire, you may also provide input on the following topics which have arisen during the course of the Special Master's investigation and are related to his mandate from Judge Wolf. For each topic, please provide a full response and include any legal or factual support for your position.

1. Explain the justification/rationale for current billing practices relating to Staff Attorneys paid approximately $30-$60 per hour but billed on the Fee Petition in excess of $400 per hour. Secondly, explain the justification/rationale for charging the same hourly rates for Staff Attorneys employed by a law firm (and whom are eligible for benefits and receive a W-2) and Contract Attorneys (for whom a law firms pays a third-party staffing agency) on the Fee Petition submitted to the Court.

2. Describe the appropriate venue for determining the hourly billing rates charged on the Fee Petition submitted in this case, whether Boston, New York, San Francisco or elsewhere. Please explain what import, if any, the venue of the case has in determining the appropriate hourly billing rate for purposes of the Fee Petition.

3. Explain, in general terms, the role of lead counsel in preparing and filing fee petitions in multi-firm class action matters. Specifically, explain in detail those duties and obligations with which Labaton (as lead counsel) was charged in drafting, compiling, and submitting the Fee Petition (Docket #104) and whether Labaton fulfilled each of these duties. Please include any recommendations on best practices or possible ways to improve current practices and/or reform the lead counsel role in future cases.

4. Please comment on the accuracy of the following language, which appears in the following exhibits to the Fee Petition—Declaration of Lawrence A. Sucharow, Esq., ¶ 7 (Docket #104-15); Declaration of Garrett J. Bradley, Esq., ¶ 4 (Docket #104-16); and Declaration of Daniel P. Chiplock, Esq., ¶ 5, (Docket #104-17):

DONOGHUE BARRETT & SINGAL

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.

In your discussion, please address any potential areas of confusion, misinterpretation or lack of transparency arising out of the use of this language in the Fee Petition. Please include any suggestions, recommendations or model language that would enhance the integrity of Fee Petitions and the predictability with which Courts may rely on them in assessing hourly rates.

5. Describe the appropriate factors and/or criteria law firm management should consider in setting hourly billing rates of "off-track" Staff Attorneys, such as those Staff Attorneys represented on the Fee Petition, including but not limited to comparable associate and/or partner hourly rates, comparative data from other law firms, and historical rates accepted by other courts in other class action fee petitions.

6. Explain the reasoning, including any monetary and non-monetary benefits, for entering into a cost-sharing agreement by which a firm employing Staff and/or Contract Attorneys invoices another firm for the work performed by one or more Staff Attorneys, such as the agreement between Labaton and Lieff, on the one hand, and Thornton, on the other, to allocate to Thornton the cost of certain Staff and/or Contract Attorneys in the State Street matter and relatedly, for permitting Thornton to claim the hours expended by those Staff and/or Contract Attorneys on the Thornton Fee Petition. Explain why the parties chose to enter into a cost-sharing agreement of this nature rather than negotiating direct payments to share in one-third of the costs, without having Thornton claim Staff and/or Contract Attorneys on the Fee Petition.

7. If you desire, you may provide input on recommendations for the Special Master and the Court on best practices or possible ways to improve current practices, or both, in any or all of these areas.

DONOGHUE BARRETT & SINGAL

The above topics are not exhaustive of issues raised in the Special Master's inquiry and, of course, the Special Master's Final Report may address other areas that have arisen or are related to his inquiry and investigation. Toward that end, if you wish, you may provide any other input that you believe is relevant to or raised by the Special Master's inquiry.

Confidentiality

The submission should be addressed to Counsel for the Special Master and submitted directly to Counsel via email and/or first-class mail. To maintain the confidentiality of the Special Master's investigation, submissions should not be filed on ECF. However, should you wish to comment on the corresponding responses submitted by the ERISA law firms, you are encouraged to do so in your response.

Given the great importance of the anticipated responses, it may be necessary for the Special Master to refer to and/or quote one or more of the firms' responses in his Final Report. In the event such reference becomes part of the Final Report, the Special Master reserves the right to include the firms' submission(s) as an exhibit to his Final Report, which will be made available to the public.

Please feel free to contact me with any questions or concerns.

Thank you.

Very yours truly,

William F. Sinnott
Counsel to the Special Master

EXHIBIT G

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

CONSOLIDATED RESPONSE BY LABATON SUCHAROW LLP, LIEFF CABRASER HEIMANN & BERNSTEIN LLP, AND THORNTON LAW FIRM LLP TO SPECIAL MASTER'S JULY 5, 2017 REQUEST FOR SUPPLEMENTAL SUBMISSION

Labaton Sucharow LLP ("Labaton Sucharow"), Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser"), and the Thornton Law Firm LLP ("Thornton," and collectively with Labaton Sucharow and Lieff Cabraser, the "Firms"), respectfully provide this consolidated response to the Special Master's July 5, 2017 Request for Supplemental Submission.

I. PRELIMINARY STATEMENT

The Special Master invites the Firms to now "provide any information they should find relevant, as such information will inform the Special Master's findings, conclusions, and recommendations presented in his Final Report and Recommendation." The Firms wish to note for the record that in the course of the Special Master's investigation, the Firms have provided an abundance of information that should inform the Special Master's findings, conclusions, and recommendations. Specifically, the Firms each participated in multi-hour informal interviews with the Special Master, his counsel, and his technical advisor on April 4 and 5, 2017; collectively responded to 193 interrogatories on June 1, June 9 and July 10, 2017; collectively responded to 104 document requests by producing more than 176,000 pages of requested documents; and produced witnesses for a total of 27 depositions between June 5 and July 17 2017.

The Firms respectfully submit that the substantial factual record developed by the Special Master during his investigation does not warrant any change in the Court's November 2, 2016 Fee Award [Dkt. No. 111] nor the imposition of sanctions on any of the Firms. The reasonableness of the Firms' Fee Petition is further supported by the accompanying declaration of William B. Rubenstein ("Rubenstein Decl."), the Sidley Austin Professor of Law at Harvard Law School, and one of the nation's leading national experts on class action law and practice.

II. RESPONSE TO AREAS OF CONCERN RAISED BY THE COURT AND ADDRESSED BY THE SPECIAL MASTER

The Firms submit that the extensive factual record, along with the declaration of Professor Rubenstein, should lead the Special Master to make the following findings:

- The Firms employed the correct legal standards in their request for an award of attorneys' fees and expenses. *See* Mem. 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 ("Fee Brief") [Dkt. No. 103-1] at 3-5, 24; Rubenstein Decl. at 7-12, 27-34.

- Except as stated below and previously on the record in this case, as well as in the Firms' discovery responses to the Special Master, the representations made by the Firms in the request for awards of attorneys' fees and expenses were accurate and reliable, and counsel asserted a proper factual basis for what was represented to be the lodestar for each firm. *See* LS Interrog. Resp. Nos. 17-19, 23-25, 27-29, 32, 33, 36, 37, 40, 41, 44-47, 51, 54-59, 61-67, 71; LCHB Interrog. Resp. Nos. 47, 48, 53, 57, 62, 63, 64, 72, 73; Thornton Interrog. Resp. Nos. 49-51, 55, 64, 66.

- The Firms acknowledge, as they did in their November 10, 2016 letter to the Court [Dkt. No. 116], that some Staff Attorney lodestar was "double-counted" in the Firms' request for attorneys' fees. These errors were unintentional and brought to the Court's attention by the Firms promptly upon their learning of the mistakes. *See* LS Interrog. Resp. Nos. 63-66; LCHB Interrog. Resp. Nos. 39, 40, 67, 68; Thornton Interrog. Resp. Nos. 67, 69, 74, 75. The factual record submitted to the Special Master during the course of this investigation confirms the Firms' position that the errors were unintentional.

- The representations made in the November 10, 2016 letter to the Court [Dkt. No. 116] were and are materially accurate and reliable. LS Interrog. Resp. Nos. 63, 66, 67, 71; LCHB Interrog. Resp. Nos. 65, 68, 69, 72, 73; Thornton Interrog. Resp. Nos. 70, 71, 74-76.

- Labaton Sucharow submits that its representations requesting a service award to Arkansas Teacher Retirement System were accurate and reliable. *See* LS Interrog. Resp. Nos. 4, 17; Belfi Dep. at 33:23-34:9, 37:12-41:6; Goldsmith Dep. at 18:6-23:18.

- Neither Lieff Cabraser nor Thornton had clients in this matter for which they sought service awards.

- None of the Firms made representations to the Court concerning the service awards sought by counsel for the ERISA plaintiffs.

- The attorneys' fees, expenses and service award to Arkansas Teacher Retirement System were reasonable, and none should be reduced beyond the $2 million the Firms already have contributed to the cost of the Special Master's investigation. In addition to this $2 million, the Firms have incurred substantial other costs relating to this investigation, including, for Labaton Sucharow and Thornton, the costs of outside counsel; and, for all three firms, the substantial time spent by senior members of each firm participating in this investigation. The costs already associated with this investigation shall continually serve as an important reminder to the Firms to double check future fee petitions to ensure their clarity and accuracy to the court. The Firms are fully cognizant of the lessons of this investigation, as reflected in the Firms' recommendations on best practices described below. That fact notwithstanding, the net effect of the errors in reported lodestar were modest with respect to the lodestar multiplier that was used as a cross-check against the requested percentage-based fee, and still well within the bounds of what is considered acceptable in this Circuit. *See* LS Interrog. Resp. Nos. 59, 63; LCHB Interrog. Resp. Nos. 59, 61; Fee Brief at 7, 24-25; Rubenstein Decl. at 30-34.

- No misconduct occurred in connection with the attorneys' fees, expenses, or service award to Arkansas Teacher Retirement System previously ordered. The double-counting of lodestar at the center of the Special Master's inquiry, while regrettable both in terms of the initial confusion caused to the Court and the subsequent substantial time and expense devoted to explaining the matter, was an inadvertent and honest mistake. LS Interrog. Resp. Nos. 33, 36, 37, 54-59, 61-67, 71; LCHB Interrog. Resp. Nos. 39, 65, 67; Thornton Interrog. Resp. Nos. 67, 69, 75.

- None of the Firms should be sanctioned in this matter.

III. SPECIAL MASTER'S REQUEST FOR INPUT ON SPECIFIC TOPICS

A. Request No. 1 – Billing Practices Relating To Staff Attorneys

For all three of the Firms, billing rates for Staff Attorneys are based (just as for any other type of attorney, such as an associate or partner) on the firm's understanding of an appropriate market rate for the legal services rendered. *See* Fineman Dep. at 47:5-12; 48:3-17; 50:25-51:6; 52:10-22; 55:4-10; Heimann Dep. at 57:16-58:10, 62:4-68:22; Politano Dep. at 35:22-37:2, 38:19-42:2, 45:6-49:4; Johnson Dep. at 12:5-16; 13:4-17. This approach is consistent with the general practice of the marketplace and applicable case authority. *See* Rubenstein Decl. at 2, 12-30. Billing Rates for Staff Attorneys are not dependent on what they are actually paid, in the

same way that billing rates for associates and partners are not dependent on what they are actually paid. Fineman Dep. at 48:3-17, 50:6-11; Rubenstein Decl. at 29-30; Johnson Dep. at 20:5-22:13, 25:7-19.

With respect to the second part of this request, Labaton Sucharow responds that all of its Staff Attorneys were Labaton Sucharow employees, and accordingly the question of whether "agency" versus non-agency Staff Attorneys should appropriately be billed at the same rate does not apply to it. *See* Johnson Dep. at 19:4-11, 22:5-13.

Lieff Cabraser responds that those of its Staff Attorneys who were paid directly by the firm (versus those paid through an agency) performed the lion's share of Lieff Cabraser's document review in the litigation. *See* LCHB Interrog. Resp. No. 24. Some Staff Attorneys actually began their work on the litigation as agency attorneys before being hired directly by Lieff Cabraser. *Id.* By the time the Staff Attorneys were working on the detailed issue memoranda discussed during discovery in this matter (which entailed a deeper analysis of the documents reviewed), only one LCHB Staff Attorney was still being paid through an agency—Virginia Weiss. *Id.* The remaining LCHB Staff Attorneys were all being paid directly by Lieff Cabraser, and their hours heavily outnumbered those contributed by agency attorneys. *Id.* Throughout the litigation, LCHB Staff Attorneys were given the same type of assignments, supervised in the same manner, and expected to produce the same quality of work regardless of whether they were paid directly by the firm or through an agency. *See, e.g.*, LCHB Interrog. Resp. Nos. 19, 22, 29-30; Chiplock Dep. at 113:14-116:10; Dugar Dep. at 95:7-99:12; Fineman Dep. at 41:4-8, 43:14-44:11; Heimann Dep. at 51:18-53:2.

For instance, while being paid through an agency in 2015, Ms. Weiss authored detailed issue memoranda just as the other Staff Attorneys did. These memoranda have been produced to

the Special Master. *See* LCHB-0028663-0028672 (and exhibits at LCHB-0028677-0029118); LCHB-0029119-0029124 (and exhibits at LCHB-0029125-LCHB-0029182). So, for that matter, did the two Staff Attorneys (Ann Ten Eyck and Rachel Wintterle) who were physically situated in LCHB's San Francisco offices for several months but contracted through an agency that was paid directly by Thornton. These memoranda have also been produced. *See* LCHB-0003314-0003319; LCHB-0029183-0029200 (and exhibits at LCHB-0029201-0031489); LCHB-0031490-0031528 (and exhibits at LCHB-0031529-0039667). The only two (2) other LCHB Staff Attorneys who were still paid by an agency in 2015 (Jade Butman and Andrew McClelland) did not produce memoranda simply because they had stopped working on the State Street Litigation well before those assignments were given. *See* LCHB Interrog. Resp. No. 24.

Billing rates for Staff Attorneys at Lieff Cabraser are not impacted by whether they are being paid directly by the firm or are being paid through an agency; they are based (just as for any other type of attorney, such as an associate or partner) on the firm's understanding of appropriate market rates for similar legal services rendered. *See* Fineman Dep. at 47:5-12; 48:3-17; 50:25-51:6; 52:10-22; 55:4-10; Heimann Dep. at 57:16-58:10, 62:4-68:22. Even so, in 2015, the amount paid by the firm to an agency for an agency attorney's work, on an hourly basis, was comparable to the hourly pay the firm would have made directly to a Staff Attorney being paid directly by the firm. *See* Fineman Dep. at 36:21-38:7.

B. Request No. 2 – The Appropriate Venue For Determining Hourly Billing Rates

The Firms set their billing rates based on what they perceive to be, as described under applicable Supreme Court and First Circuit authority, "those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *See Martinez-Velez v. Rey-Hernandez*, 506 F.3d 32, 47 (1st Cir. 2007) (quoting *Blum v. Stenson*, 465

U.S. 886, 895 n.11 (1984)); LS Interrog. Resp. No. 51; Johnson Dep. at 12:5-14:19; LCHB Interrog. Resp. Nos. 47, 48, 53, 64; Fineman Dep. at 76:7-77:8; Thornton Interrog. Resp. Nos. 49, 50, 51, 55. Labaton Sucharow is in New York, Lieff Cabraser is principally in San Francisco, and Thornton is in Boston. *Id.* Each of the Firms, however, maintains a national class action practice and litigates in many locations other than these home bases. Given the specific role that hourly rates play in determining the reasonableness of the overall fee award in this case, the Firms' rates should not be adjusted to Boston rates for purposes of analyzing the fee petition. *See* Rubenstein Decl. at 19-20 and n.31.

As was mentioned above, the Firms' rates were not provided in the fee application as the "basis" for their requested fee, but rather simply to enable a "cross-check" of the overall time and effort expended on the case against the requested "percentage-of-fund" fee. The First Circuit, it should be noted, is predominantly a percentage-of-fund jurisdiction, and does not mandate a lodestar cross-check. *See In re Thirteen Appeals Arising Out of the San Juan DuPont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995) (noting the "distinct advantages" of the percentage-of-fund method over the lodestar method of calculating fees); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 81 (D. Mass. 2005); Rubenstein Decl. at 8-9. When a lodestar cross-check is performed regardless, the focus is not on the "necessity and reasonableness of every hour" expended by counsel, but rather on whether the fee broadly reflects the degree of time and effort expended by counsel. These points were briefed before Judge Wolf in support of the Firms' fee award, and were not disputed. *See* Fee Brief at 3-4, 24. Indeed, when David Goldsmith revealed to Judge Wolf that the Firms were "contemplating [a percentage of the fund] in the 25 percent range" for the attorneys' fees, Judge Wolf responded, "That's great . . . I usually start with 25 percent in mind." Trans. of Status Conference (Dkt. No. 85), June 23, 2016, at 15:5-22.

As noted above, Labaton Sucharow, Lieff Cabraser and Thornton all maintain complex class action practices that are national in scope. Accordingly, the Firms' billing rates – which were based on rates used by national peer plaintiff and defense law firms that litigate matters of a similar magnitude – are appropriate and were set using the correct legal standard. *See* LS Interrog. Resp. Nos. 44, 51, 62; Thornton Interrog. Responses 49, 51, 55, 66; LCHB Interrog. Resp. Nos. 47, 48, 53, 64.

To the extent that rates prevailing in the Boston legal market have particular or greater relevance, Professor Rubenstein has opined that Plaintiffs' counsel's billing rates were reasonable. Professor Rubenstein forms these opinions on the basis that (a) Plaintiffs' counsel's rates are consistent with rates that courts in Massachusetts have awarded in approving class action fee petitions in recent years; (b) the rates fall far below those that have been judicially approved in the context of fee petitions submitted by defense firms in bankruptcy cases in this District; and (c) the blended billing rate for the entire case is consistent with blended billing rates in court-approved fee petitions in class action settlements in the District of Massachusetts and in $100-$500 million cases throughout the country. *See* Rubenstein Decl. at 1-3, 12-27. Professor Rubenstein has also shown that if one goes to the trouble of adjusting the out-of-town rates to the Boston market, it has about a 3% effect on the total lodestar, meaning that the cross-jurisdictional rate differentials are immaterial, especially for cross-check purposes. *Id.* at 21-22. Moreover, Thornton has many years of experience in the Boston market, and its court-approved rates are comparable to those of the other firms here.

C. Request No. 3 – The Role Of Lead Counsel In Preparing And Filing Fee Petitions In Multi-Firm Class Actions

In multi-firm class action cases, lead counsel has overall responsibility for preparing and filing a fee petition. This responsibility generally includes researching and drafting the

supporting brief, drafting the principal fee declaration or portion of the omnibus settlement and fee declaration in support of the fee petition, securing individual fee and expense declarations from co-counsel (often by circulating a model declaration), and securing any client or expert declarations that may be submitted. Lead counsel may and often will delegate certain research and drafting assignments to co-counsel.

Lead counsel's responsibility with respect to the accuracy of individual fee declarations other than its own has limitations. For example, lead counsel supplies a template for such declarations, but does not require the use of any particular language. Moreover, because lead counsel does not have access to co-counsel's internal timekeeping records, lead counsel must rely on co-counsel to report their own lodestar accurately. *See* LS Interrog. Resp. No. 56; Goldsmith Dep. at 119:3-20; Chiplock Dep. at 228:7-9 ("I don't view it as Labaton's ultimate responsibility to ensure that Lieff Cabraser's lodestar was reported accurately.").

Lead counsel has a responsibility to make reasonable efforts to detect and remedy errors in co-counsel's fee declarations to the extent they may be apparent on their face. *See* Goldsmith Dep. at 119:3-120:17. Here, the existence of double-counting between the Thornton and Labaton Sucharow fee declarations, and between the Thornton and Lieff Cabraser fee declarations, was not apparent on the face of any single fee declaration, but rather would become apparent only if the fee declarations were compared with one another. *Id.*

Labaton Sucharow entered into a cost-sharing agreement with Thornton in which Labaton Sucharow allocated certain Staff Attorneys, all of whom were Labaton Sucharow employees, to Thornton and invoiced it on a monthly basis for the work those Staff Attorneys performed. *See* Goldsmith Dep. at 91:20-92:3, 95:19-22; Rogers Dep. at 70:3-73:3; Politano Dep. at 22:8-24:23, 26:11-19, 28:15-23; LS Interrog. Resp. Nos. 23, 32, 37. Labaton Sucharow

invoiced Thornton at a rate of $50 per hour for each staff attorney. *See e.g.* TLF-SST-000153; TLF-SST-003418 – TLF-SST-003420; TLF-SST-000415. The $50 hourly rate included a share of the overhead costs associated with each staff attorney. Garrett Bradley Dep. at 93:23-95:5.

In reaching and implementing this cost-sharing arrangement, Labaton Sucharow and Thornton did not discuss which firm would claim the hours expended by these Staff Attorneys in its individual fee declaration. *Cf.* Sucharow Dep. at 26:20-22, 38:20-39:4; Belfi Dep. at 59:6-15; Goldsmith Dep. at 104:12-107:5, 122:6-13; Rogers Dep. at 95:16-96:2; Zeiss Dep. at 24:19-25:4; Politano Dep. at 22:22-25; LS Interrog. Resp. No. 33. It has since become apparent that the Firms had different views as to which firm would claim which Staff Attorneys on its respective fee petitions. *See* Chiplock Dep. At 135:20-137:11 ("I mean, we didn't write it out, but it was obvious to me that . . . when you're paying someone to do work, and you're taking on the risk of not being paid for that work, which is always a risk in our cases . . . you include it in your lodestar at the end of the day."); Garrett Bradley Dep., at 76:6-77:22 ("My assumption all along is, since we were on the papers, we're local counsel, that we would just include those people in our fee petition and on a rolling basis, as we got towards the end and Evan Hoffman is asking for a daily breakdown of time for the individuals that are Thornton's, we just understood that to mean that we were going to put them on our fee application."); Rogers Dep., at 91:18-96:2 ("Q: And did you have an understanding . . . whether Thornton was going to claim those staff attorneys on their fee petition? A: I certainly assumed they would . . . They were paying for it up front," and later stating that he had "no knowledge" of any discussions concerning why Thornton was allocated staff attorneys, nor any discussions concerning whether or how Thornton would claim staff attorneys on its fee petition)"; Goldsmith Dep., at 105:9-106:13 (also acknowledging that there was never an agreement concerning how Labaton Sucharow and Thornton would claim

staff attorneys on their respective fee petitions, but clarifying that he "certainly never made" an assumption "that the Thornton firm would put those people on its lodestar report").

In other cases involving staff attorney cost-sharing, Labaton Sucharow's general practice has been to report all hours billed by its staff attorney employees on its own fee declaration, and to work out any associated economic issues with co-counsel separately. *See* Politano Dep. at 22:18-25 (Q: "Did you have any understanding of whether those staff attorneys would be reported on the firm's fee petition? 'The firm' being Labaton." A: "The common practice was that it would be on Labaton's fee declaration, but there was no discussion at that point as to the way it would be handled."), 23:14 (testifying that this "common practice" was followed "[n]inety percent of the time"); Rogers Dep. at 96:13-17 ("I've seen it done both ways. I think it's more common to do what Judge Rosen's referring to as the latter . . . one big omnibus fee petition and then kind of dole it out at the end."); Johnson Dep. at 32:3-4 (alternative practice of cross-reporting has been used in "very, very few cases"); Goldsmith Dep. at 97:11-99:16 (alternative practice used in two other cases); Goldberg Dep. at 46:10-11 (alternative practice used in "[o]nly one case that I remember"); LS Interrog. Resp. No. 32; *see also* Zeiss Dep. at 24:21-25:2 ("[F]rom my perspective . . . the lodestar reports are reports of each firm's personnel based on their own time records. . . . It would never occur to me that one firm could be reporting personnel from Labaton.").

Indeed, among the 16 class action matters that Labaton Sucharow has identified in discovery as involving staff attorney cost-sharing, *see* LS Interrog. Resp. No. 32, ten (10) have proceeded to a court-approved settlement to date.[1] Labaton Sucharow adhered to its general

[1] The 10 settled cases are *City of Providence v. Aeropostale*, *Broadcom*, *Celestica*, *Countrywide*, *J. Crew Group*, *Lehman Brothers*, *Massey Energy*, *Nu Skin*, *Regions Morgan Keegan*, and *Semtech*.

practice of reporting staff attorney time exclusively in its own fee declaration in at least seven (7) of the ten (10) settled cases. Still, Labaton Sucharow acknowledges that, like here, other law firms have occasionally claimed Labaton Sucharow employed staff attorneys on their fee petitions. Johnson Dep. at 28:24-29:7.

Here, the lack of discussion (both internally and externally) as to which firm would report the hours on its individual fee petition, Labaton Sucharow's familiarity with its own general practice, and Thornton's reasonable belief that it would list the Staff Attorneys for whose labor and overhead it had paid, caused a good faith error to occur: Labaton Sucharow followed its general practice, while Thornton acted in accord with its own reasonable beliefs, and a good faith mistake was made.[2]

Nicole Zeiss, Labaton Sucharow's Settlement Counsel, reviewed each fee declaration individually for form, pursuant to her usual practice at the time. *See* Zeiss Dep. at 11:15-22, 55:25-56:3; LS Interrog. Resp. No. 54. She did not compare the declarations to each other, however. It was not her usual practice to do so; there is ordinarily no reason to believe that there should be any overlap between employees of different firms; and she was not told by anyone at Labaton Sucharow that there was the potential for attorney time to be reported in more than one fee declaration. *See* Zeiss Dep. at 24:19-25:4, 56:3-10; LS Interrog. Resp. No. 56.

Additionally, the existence of double-counting between Thornton and Lieff Cabraser fee declarations was smaller in kind and less obvious on its face, and would not have been immediately clear on first comparison, particularly to a reviewing attorney from Labaton

[2] The differential in hours reported by the two firms for some Staff Attorneys appears to have occurred at least in part because the firms used different sources. Thornton used numbers that were in a report sent to Thornton by Todd Kussin in an email dated August 25, 2015 (TLF-SST-031158); Labaton Sucharow used numbers that it pulled from its system approximately a year later (LS Interrog. Resp. No. 54).

Sucharow. Although the Thornton and Lieff Cabraser fee declarations include a handful of overlapping Staff Attorney names, the numbers of hours and lodestars for such Staff Attorneys consistently differ, and Labaton Sucharow in any event was unaware of any agreement between Thornton and Lieff Cabraser regarding which of those two firm's fee declarations should reflect the time of attorneys hosted by Lieff Cabraser but paid for by Thornton. See LS Interrog. Resp. No. 36; Goldsmith Dep. at 122:8-10. Moreover, of the six (6) attorneys who reported time that was listed by both Lieff Cabraser and Thornton in their fee declarations, the hours for two (2) of them (Virginia Weiss and Andrew McClelland)[3] were ***correctly*** allocated between Lieff Cabraser and Thornton and not double-counted—meaning there actually were no errors as to these two particular attorneys for Labaton Sucharow to detect. *See* LCHB Interrog. Resp. No. 40; Chiplock Dep. at 151:8-152:2.

This leaves only four (4) attorneys who reported at least some time that was inadvertently duplicated and incorrectly included in both Lieff Cabraser's and Thornton's fee declarations—Christopher Jordan, Jonathan Zaul, Ann Ten Eyck, and Rachel Wintterle.[4] *See* LCHB Interrog.

[3] It bears mentioning that both Ms. Weiss and Mr. McClelland were agency attorneys who were not paid directly by Lieff Cabraser, meaning Thornton paid an outside agency (not Lieff Cabraser) directly for the hours spent by Ms. Weiss and Mr. McClelland reviewing documents assigned to Thornton. *See* LCHB Interrog. Resp. Nos. 19, 24, 31; Hoffman Dep. at 60:2-8; 60:19-61:16; 80:8-13. Lieff Cabraser accordingly did not send invoices to Thornton for these two attorneys. Furthermore, Ms. Weiss worked remotely and thus was not making use of Lieff Cabraser's San Francisco facilities. *See* LCHB Interrog. Resp. No. 24.

[4] Messrs. Jordan and Zaul were the only Staff Attorneys who were directly paid by Lieff Cabraser but who also performed at least some work (roughly 9 weeks) that was reimbursed by Thornton (and later included in Thornton's fee declaration). *See* LCHB Interrog. Resp. Nos. 24, 31, 38; Hoffman Dep. at 61:17-62:5. Messrs. Jordan and Zaul were accordingly the only two Lieff Cabraser lawyers whose time (again, 9 weeks' worth) was invoiced to Thornton. Messrs. Jordan and Zaul, like Ms. Weiss, also worked remotely, and therefore did not make use of Lieff Cabraser's San Francisco facilities. *See* LCHB Interrog. Resp. No. 24.

Ms. Ten Eyck and Ms. Wintterle, meanwhile, were lawyers hired from and paid via an outside agency for the entirety of the 3 to 4 months they worked on the case. *See* LCHB

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Resp. Nos. 31, 65; Chiplock Dep. at 152:3-154:20, 156:7-21. And for each of these four (4) attorneys, the duration of the cost-sharing or hosting arrangement (and the resulting inadvertent redundancy in time-reporting) ranged from just 9 weeks to roughly 3 ½ months—modest, in other words, in comparison to the more than 5-year lifespan of the litigation. *See* LCHB Interrog. Resp. Nos. 31, 38, 65; Hoffman Dep. at 61:17-62:5 (describing sharing relationship as to Messrs. Jordan and Zaul "[t]hat didn't go on for maybe more than a month or two."). This factor (combined with the correct allocation of the lodestar by the two (2) other shared Lieff Cabraser/Thornton Staff Attorneys named above) made any timekeeping duplication between Lieff Cabraser's and Thornton's fee declarations even less readily detectable by Labaton Sucharow than the duplication between Labaton Sucharow's and Thornton's fee declarations.

Notwithstanding the foregoing, Labaton Sucharow acknowledges that it, as lead counsel, bore final responsibility to avoid errors in the Fee Petition that reasonably could be detected. *See* Goldsmith Dep. at 117:4-11. The double-counting in both pairs of fee declarations regrettably was not detected before the Fee Petition was filed. Upon learning of the double-counting, however, Labaton Sucharow disclosed it to the Court promptly, publicly, and candidly. *See* Goldsmith Dep. at 165:15-166:15.

D. Request No. 4 – Accuracy Of Fee Declaration Language

The language concerning "hourly rates" that was contained in the individual fee declarations was never intended to mislead the Court, but rather was intended to inform the Court that the hourly rates were the same as or materially similar to rates accepted by courts in other class action matters in which the Firms had filed fee petitions, and were not special rates

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Interrog. Resp. Nos. 19, 24, 31, 40. Lieff Cabraser did not send invoices for the hours worked by these two attorneys because Thornton paid the agency directly for their time. *See* LCHB Interrog. Resp. Nos. 19, 24, 38, 40.

for this action. *See* LS Interrog. Resp. Nos. 61, 71; LCHB Interrog. Resp. No. 63. For Labaton Sucharow and Lieff Cabraser, the fee petitions were also meant to impart that the same annual rates for each attorney and non-lawyer staff person listed therein are used in the lodestar reports for all fee petitions in a given year (typically for purposes of a lodestar cross-check). *Id.*; *see also* Rubenstein Decl. at 12 n.14.

Nonetheless, we recognize that the Court and perhaps others have interpreted this sentence in a manner other than as intended. In particular, we understand that the Court read this sentence to mean that the law firms' rates are billed to clients that pay for the firms' services on an hourly basis. Labaton Sucharow and Lieff Cabraser have in limited circumstances had clients who have paid by the hour that were actually billed at those rates, or the analogous rates in a given year, and the rates in question (or comparable rates in earlier years) were in fact the "regular" rates charged in such circumstances. *See* LS Interrog. Resp. Nos. 45, 46; Johnson Dep. at 53:13-16; Politano Dep. at 43:4-11; LCHB Interrog. Resp. Nos. 49, 54, 63; Heimann Dep. at 87:7-89:7; Chiplock Dep. at 194:24-198:5, 204:6-205:3. Therefore, even if the word "charged" were read in the literal fashion described above (rather than in the manner it was intended), the "hourly rates" sentence on its face is not misleading as to Labaton Sucharow and Lieff Cabraser. It nonetheless remains true that the overwhelming majority of these firms' clients (and all of Thornton's clients) retain the Firms' services on a contingency basis.

As concerns the language in Garrett Bradley's declaration that refers to the rates as those of attorneys and professional support staff "in my firm," Thornton responds that it did not intend through this language to suggest that all persons listed in the fee declaration were employees of Thornton. This language resulted from Thornton's use of a template declaration provided to all firms by Labaton Sucharow. Unfortunately, Thornton did not modify the template language

stating that all of the individuals listed in its fee petition were its own employees. As Thornton has acknowledged in its responses to the Special Master's inquiries and in depositions of its partners – *see, e.g.*, Garrett Bradley Dep. at 81:12-83:13 – it should have modified the language in the template Labaton Sucharow provided to make it more precise (for example, by inserting an additional phrase after "in my firm," such as "or performing work on behalf of my firm").

In an effort to avoid any potential confusion, misinterpretation, or perceived lack of transparency going forward, we recommend that counsel be encouraged to use the following revised and expanded language:

> The hourly rates for the attorneys and professional support staff in my firm, ***or performing work on behalf of my firm***, included in Exhibit A are the ~~same as my~~ firm's regular rates charged for their type of services ***in contingent-fee matters.*** ~~charged for their services, which~~ ***These rates (or materially similar rates)*** have been accepted ***by courts*** in other complex class actions ***for purposes of "cross-checking" lodestar against a proposed fee based on the percentage-of-fund method or determining a reasonable fee under the lodestar method.***
>
> ***Based on my knowledge and experience, these rates are within the range of rates normally and customarily charged in their respective cities by attorneys and professional support staff of similar qualifications and experience in cases similar to this litigation.***
>
> ***To the extent the firm represents clients in non-contingent/ hourly fee matters, these rates are also the regular rates that generally would be charged to those clients for services rendered. The firm's current clients, however, do not typically pay an hourly rate and instead retain the firm's services on a contingent-fee basis.***

This revised and expanded language is derived in part from the individual fee declarations submitted in the similar *Bank of New York Mellon* Indirect FX class action in which Lieff Cabraser and Thornton, but not Labaton Sucharow, were involved. *See* LCHB Interrog. Resp. No. 63; Chiplock Dep. at 195:14-202:22. The language is intended to clarify, among other

things, that the hourly rates used in connection with the lodestar cross-check of the requested fee—while fully supported, customary in the industry, and accepted by courts in other complex class actions—are used for all lodestar reports in a given year but are not typically billed to the firms' clients because the firms' clients do not typically pay by the hour. *See* Chiplock Dep. at 200:3-201:7, 208:15-209:18; Chiplock Dep. Ex. 2 (Lieff Cabraser fee declaration in *Bank of New York Mellon*); *see also* LS Interrog. Resp. Nos. 46 (setting forth rates charged to clients that paid by the hour), 71; LCHB Interrog. Resp. No. 63.

E. Request No. 5 – Factors To Consider In Setting Hourly Billing Rates Of Staff Attorneys

Labaton Sucharow submits that the appropriate factors and criteria law firm management should consider in setting hourly billing rates of "off-track" staff attorneys, including the Staff Attorneys referenced in the Fee Petition, are described in Labaton Sucharow's Responses to Interrogatory Nos. 44 and 45. *See also* Politano Dep. at 38:2-42:2.

Lieff Cabraser, for its response, refers to the response to Sections A and B above (and the testimony and discovery responses cited therein), in addition to the documents produced by Lieff Cabraser and the declaration by Professor Rubenstein.

Thornton, for its response, states that given the contingency nature of its work, Thornton does not set hourly billing rates annually or as a routine matter. *See* Thornton Interrog. Resp. Nos. 49, 51, 52, 55. In this case, Thornton used a rate of $425 per hour for the Staff Attorneys for whose labor and overhead it paid because that rate had been used and accepted by the court in *In re Bank of New York Mellon Corp.*, 12-MD-02335, S.D.N.Y., and because it was Thornton's understanding, from communications with co-counsel more than a year prior to the submission of the Fee Petition, that a rate of $425 per hour therefore would be reasonable to use in the State

Street Litigation. *See* Hoffman Dep. at 58:17-59:18; Garrett Bradley Dep. at 48:20-49:5; Thornton Interrog. Resp. Nos. 27, 52.

Thornton submits the following information concerning the hourly rate of Michael Bradley, the outside attorney who performed document review work on the matter, and for whose work Thornton used an hourly rate of $500 in its lodestar calculation. As Thornton has previously identified in its interrogatory responses, Mr. Bradley is an actively practicing, Massachusetts-admitted lawyer who occasionally performs work for Thornton and its clients. *See* Thornton Interrog. Resp. No. 45; Michael Bradley Dep. at 29:11-16. As detailed in his deposition and in Thornton's responses to interrogatories, Mr. Bradley is an experienced lawyer who has been practicing since 2005, including for the government and as a solo practitioner. *Id*. at 11:7-12:9. Michael Bradley is not an employee of the firm, but rather has provided legal services to the firm and its clients on occasion.

A need for Mr. Bradley's services arose in 2013, when the Firms began to receive documents in the State Street matter and, consequently, began staffing a document review. Garrett Bradley believed that Michael Bradley's experience as an attorney and his background, specifically his service as the former head of the Massachusetts Underground Economy Task Force, might make him particularly qualified to potentially provide a unique perspective on the documents he reviewed. As such, Garrett Bradley approached Michael Bradley, who agreed to assist Thornton with the document review. Garrett Bradley sought and received the approval of Michael Thornton, then-managing partner of Thornton, for this arrangement.

Michael Bradley was justified in requesting and receiving $500 per hour for his services. Michael Bradley Dep. at 28:17-29:5. Mr. Bradley and Garrett Bradley have testified that Michael Bradley's rate of $500 per hour was based on two key benchmarks. First, Michael Bradley had

been paid $450 per hour by a private client prior to beginning his work on the State Street matter.[5] Michael Bradley Dep. at 28:17-29:5. Second, Michael Bradley's $500 per hour rate was also benchmarked to his risk of receiving nothing for his time. Unlike in the case of his paying client, in the State Street matter Michael Bradley performed the work on a contingent basis, thus saving Thornton the upfront cost of paying him for his work, and taking on the risk that, if the case did not have a positive resolution for the Plaintiffs, he would not be compensated for his work. *See* Thornton Interrog. Resp. Nos. 43, 44; Michael Bradley Dep. at 28:17-29:5; Garrett Bradley Dep. at 53:22-54:10. Michael Bradley took this risk and performed work, without pay, for more than two years. Charging a slightly higher rate for Mr. Bradley's work than for the work of attorneys who were paid concurrently for their work accords with commonly accepted principles governing contingent fee matters. *See United States v. Overseas Shipholding Grp., Inc.*, 625 F.3d 1, 13 (1st Cir. 2010) (quoting *Farmington Dowel Prods. Co. v. Forster Mfg. Co.*, 421 F.2d 61, 90 (1st Cir. 1969)) ("[T]he fact that a fee arrangement is contingent upon success is a relevant factor in determining the appropriate fee level. The reason is that 'the fact that the attorney is willing to take an all-or-nothing-arrangement might justify a fee which is higher than the going hourly rate in the community'"); *see also* Restatement (Third) of the Law Governing Lawyers § 35, Comment c, "Reasonable contingent fees" (2000) ("A contingent fee may permissibly be greater than what an hourly fee lawyer of similar qualifications would receive for the same representation. A contingent-fee lawyer bears the risk of receiving no pay if the client loses and is entitled to compensation for bearing that risk.") *See also* Rubenstein Decl. at 30, n. 48.

[5] Indeed, Michael Bradley charged a private client $500 per hour in early 2017 as well. Michael Bradley Dep. at 16:17-17-3.

Finally, Thornton submits that, as his testimony and documents produced by Thornton demonstrate, Michael Bradley consistently reviewed documents in the Catalyst database over a two-year period. Mr. Bradley's work during this period totaled 449.1 hours. Thornton mistakenly undercounted this time in its lodestar chart, accounting for only 406.1 hours of his time. *See* Michael Bradley Dep. at 30:5-12; 55:13-56:10; 58:19-59:11; *see e.g.* TLF-SST-005020; TLF-SST-000588 – TLF-SST-000611; TLF-SST-010790; TLF-SST-010826; TLF-SST-010832; TLF-SST-013319.

F. Request No. 6 – Reasoning For Entering Into The Cost-Sharing Agreement In This Matter

Labaton Sucharow states that the principal reasons for entering into a cost-sharing agreement by which a firm employing staff attorneys invoices another firm for the work performed by one or more of those staff attorneys are to share costs and risk, so that the firm receiving and paying the invoices has "skin in the game" with respect to an ongoing and expensive project. Staff attorney cost-sharing is simply one example of the arrangements that law firms in multi-firm class actions make in an effort to share work, costs, and associated risk equitably. *See* Belfi Dep. at 50:19-51:16; LS Interrog. Resp. 30, 32 ; *see also* Chiplock Dep. at 127:11-128:16; Garrett Bradley Dep. at 43:4-13.

Here, as noted in No. 3 above, Labaton Sucharow entered into a cost-sharing agreement with Thornton in which Labaton Sucharow allocated certain Staff Attorneys to Thornton and invoiced Thornton on a monthly basis for the work those Staff Attorneys performed. While attorneys from both firms recall the cost-sharing arrangement, no one from either firm recalls an explicit agreement about how these hours would be accounted for on eventual fee declarations, which led to the reasonable assumptions and good-faith error described above.

Lieff Cabraser, for its part, assumed (like Thornton) that Thornton would include any Staff Attorney hours for which Thornton had borne financial responsibility, and thus the risk of non-payment, in its own lodestar report. LCHB Interrog. Resp. Nos. 34, 39, 40; Thornton Interrog. Resp. Nos. 31, 36. As noted above, four of the Staff Attorneys for whom Thornton shared financial responsibility with Lieff Cabraser were agency lawyers, for whom Thornton paid outside agencies directly. *See supra n.* 3, 4. Only two of the Staff Attorneys shared between Lieff Cabraser and Thornton were ordinarily paid directly by Lieff Cabraser. For just those two attorneys, therefore, Lieff Cabraser prepared invoices for the time to be reimbursed by Thornton (roughly 9 weeks' worth). *See supra* n. 4.

G. Request No. 7 – Recommendations On Best Practices

The Firms collectively submit the following recommendations that the Special Master may wish to include in his Report and Recommendation to the Court. Together we respectfully submit five global reforms that, taken together, will significantly reduce the likelihood of confusion, misinterpretation, or any perceived lack of transparency regarding counsel's disclosure concerning hourly rates, and will significantly reduce the likelihood of recurrence of errors of the kind found here. In addition, we submit individual policy changes that each firm will implement in order to further safeguard against the inadvertent errors that occurred in this case.

First, the Firms agree that, promptly after a court grants preliminary approval to a proposed settlement,[6] lead counsel shall commence or revisit a substantive dialogue with all

[6] *See* Goldsmith Dep. at 115:23-116:22 (116:17-22:"[I]n my mind, one of the reasons this happened is because you had a very large passage of time between the end of the review project and putting in the papers where the review project impacted the presentation."); 123:23-124:7 (preliminary approval is "the right time to do it because that's the time you have an actual settlement . . . . That is the point the lawyers are looking ahead to filing a settlement motion and

Footnote continued on next page

counsel in the case concerning protocols for reporting lodestar in a forthcoming petition for attorney's fees. The subjects of this dialogue shall include, without limitation, which law firms will submit an individual fee declaration; the hourly rates used for professionals and paraprofessionals; whether certain categories of time should be excluded in whole or in part; whether certain timekeepers should be excluded in whole or in part; and how time logged by staff attorneys or other attorneys engaged on a temporary basis will be reported. Lead counsel shall ensure that the lodestar reporting protocol is documented and circulated among all counsel, and that all counsel are in agreement before individual fee declarations are prepared and filed.[7]

Second, in cases where the costs of any staff may have been shared, lead counsel, upon receiving draft fee declarations from co-counsel, shall promptly circulate all such draft

Footnote continued from previous page
fee petition. So people are going to naturally have those issues in mind."), 124:8-18, 130:15-24; *see also* Chiplock Dep. at 174:24-176:17, 181:10-182:21 (testifying that significant and unusual factor here was passage of more than a year between (1) agreement in principle to settle litigation and discussions among counsel concerning lodestar reporting issues and (2) filing of fee petition).

[7] *See* Goldsmith Dep. at 122:4-127:3 (123:7-14: "[W]hen the court issues an order granting preliminary approval to the case, that should be the point, or at least the latest point, where all the counsel get together and discuss . . . how this is going to be handled."); Rogers Dep. at 105:12-15 ("[I]t probably would have been good for the three parties to have literally memorialized some kind of agreement."); Chiplock Dep. at 221:12-18 ("I think there should have been more coordination and communication amongst the firms before the individual fee declarations were submitted, in order to assure that we did not confuse the court."); Lesser Dep. at 90:13-15 ("Case of this size with this many firms, this number of attorneys involved, obviously, you can have better communication, more coordination . . . ."); Zeiss Dep. at 56:14-57:3 ("So now what I do is, when a settlement's passed to me, I ask our accounting department if there is any STA cost sharing, I speak with the litigation team, see if there's any STA cost sharing. . . . And then, if there is, yes, we talk internally about how we think it should be handled, and speak with the firms that are . . . sharing the costs and make sure we're all on the same page about how the time will be reported.").

declarations to all counsel before the fee petition is filed. All counsel shall review all the draft fee declarations closely and share any perceived errors or concerns with all other counsel.[8]

Third, each individual firm declaration submitted in support of a petition for attorney's fees shall include clear and accurate language concerning that firm's billing practices. For instance, the revised and expanded model language set forth in Section D above, or substantially similar language, will be used by the Firms in future fee applications. *See* Goldsmith Dep. at 126:3-11.

Fourth, the Firms agree that further direction from the presiding judge is necessary to ensure that all facts relevant to the court's analysis of a fee petition are brought to its attention. To that end, the firms suggest that the Special Master recommend that each judge presiding over a class action lawsuit draft a standing order that sets forth those facts which the presiding judge believes are important to his or her analysis of an eventual fee petition. Such direction would

[8] *See* Goldsmith Dep. at 125:4-9 ("Another issue that I would suggest or reform that I would suggest is that lead counsel, upon receiving drafts of all of the fee declarations from cocounsel, circulate them to all of the counsel in the case."), 125:18-24 ("What I would suggest going forward is that we particularly circulate them, everyone to everyone, so you've got multiple eyes, you got redundancy. And I think, again, it will prompt people to point out potential issues or problems."); *see* Johnson Dep. at 55:23-56:11 ("The second thing we have done is to work with Nicole Zeiss to expand the checklist that she uses for all settlements. In the past we focus[ed] that checklist on areas that we thought would potentially be more problematic, and those related primarily to expenses. We have now expanded that so that a cross check is done with all of the attorneys listed on the main fee application and any small fee declaration."); Chiplock Dep. at 159:5-18 ("So it was all there, all the hours were there, all the names were there, including names that appeared on more than one ledger. Had I seen the other two petitions and seen the overlapping names, . . . it might have spurred me to say, ' . . . I'm going to go back and make sure that we deleted the time we needed to delete before this petition goes in.'"), 225:8-13 ("I think there would have been a benefit to the people who had been involved in the nitty gritty of the litigation maybe being more involved in eyeballing the fee declarations."), 228:10-16 ("[O]nly one firm [Labaton] had access to all the fee declarations before they were filed. And if there was an opportunity to catch a mistake, that was it, in addition to the opportunities that I had and missed before my individual fee declaration was filed."); Lesser Dep. at 90:16-18 ("[A]s far as reviewing critical documents, build some more redundancy into the system so that things don't get missed.").

ensure that class counsel do not mistakenly fail to identify facts that the court wishes to consider, enable class counsel to staff each case according to that judge's preferences (if any), and encourage the compilation and recordation of relevant information from the beginning of the case. *See, e.g.*, Heimann Dep. at 91:17-100:20.

Fifth, the Firms recommend that in complex class cases involving multiple firms, where there is a leadership structure amongst counsel imposed, the firms should report their lodestar to lead counsel on at least a semi-routine basis for the lifetime of the case. While typical in the multi-district litigation ("MDL") context (and often made mandatory in MDL orders appointing a leadership structure or committee), this practice is less regularized in class cases that are not MDLs. While such exchange was done in this case on several occasions and on an ad-hoc basis, regulating this process will aid in the capturing and correcting of errors or inadvertent duplication between the Firms as to any of their shared Staff Attorneys. Accordingly, it may be beneficial to make such periodic reports amongst plaintiffs' counsel a more regular and required feature of complex class cases such as this one, particularly if any timekeepers are performing work for more than one firm, and for lead counsel to be more specifically tasked with implementing and enforcing this requirement (*i.e.*, in the order appointing lead counsel) in addition to its other functions.

In addition to the above global recommendations, to avoid possible double-counting clerical errors like the ones that occurred here, Labaton Sucharow has now adopted for all cases going forward the following policy to formalize its general practice for the reporting of staff attorney hours in a fee petition: In all future class actions in which Labaton Sucharow serves as lead or co-lead counsel, all hours billed by staff attorneys who are Labaton Sucharow employees will be reported to the court exclusively in Labaton Sucharow's individual fee declaration and

lodestar report, regardless of whether or to what extent costs relating to such staff attorney were paid or reimbursed by another law firm during the pendency of the case.[9] Lieff Cabraser, for its part, will follow the same practice going forward.

For its part, when it enters into cost-sharing arrangements by which non-employee attorneys have performed work on a case, Thornton will disclose the existence of such agreements to the court in its individual fee declaration.

These reforms will be effective because they are straightforward, easy to implement, and widely if not universally applicable to the Firms' class action matters. We respectfully submit them for the Special Master's and the Court's consideration.

Dated: August 1, 2017

Respectfully submitted,

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[9] *See* Johnson Dep. at 55:2-8 ("[W]e are now prohibiting the practice of allowing staff attorneys to work as Labaton employees and for their hourly rates to be reimbursed to us by another firm. So that is prohibited in all cases."); Goldsmith Dep. at 126:12-127:3 ("I think personally that our firm should have a specific policy going forward on how this will be done. . . . And the policy that I would advocate is that all Labaton Sucharow staff attorney time should be on the Labaton Sucharow lodestar."); *see also* Belfi Dep. at 55:2-15; G. Bradley Dep. at 78:17-79:1; Chiplock Dep. at 138:3-21; Lesser Dep. at 55:15-20; Rogers Dep. at 93:2-11; Sucharow Dep. at 26:7-15; Thornton Dep. at 74:16-75:6 (remarks of Special Master describing method of reporting staff attorney lodestar and cost-sharing consistent with this policy).

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EXHIBIT H

EXHIBIT I

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, 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 EMPLOYEES SAVINGS AND PROFIT SHARING PLAN, on behalf of itself and JAMES PEHOUSHEK-STRANGELAND, and all others similarly situated, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 11-cv-11698 MLW

EXPERT DECLARATION OF WILLIAM B. RUBENSTEIN

1. I am the Sidley Austin Professor of Law at Harvard Law School and a leading national expert on class action law generally and class action fees in particular. The law firm Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser") has retained me to provide my expert opinion on several aspects of the fee petition that Counsel[1] submitted in this matter in September 2016, as corrected for the subsequently-found accounting errors. After setting forth my qualifications to serve as an expert and disclosing my prior relationship to this case and these firms (Part I, *infra*),[2] I provide the Special Master with empirical data and policy analysis to support the following four opinions relevant to analysis of the reasonableness of Counsel's 2016 fee request:

- ***Counsel's fee approach is the most widely used.*** (Part II, *infra*). Counsel's fee petition employed a percentage approach, provided the Court with information about their lodestar for cross-check purposes, and addressed a series of factors that courts have deemed relevant to the reasonableness inquiry. The percentage approach with a lodestar cross-check is the approach that courts most frequently use to assess the reasonableness of fee requests in common fund class action cases. It improves on the percentage approach standing alone (which could lead to a windfall for counsel) by making a rough comparison of the fee sought to

[1] Lead Counsel Labaton Sucharow LLP ("Labaton Sucharow") filed the fee petition for all the firms in the case. *See* Lead Counsel's Motion for an Award of Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs (ECF No. 102) at 2. In the accompanying brief, Lead Counsel specifies that, in addition to its firm, the term "Plaintiffs' Counsel" encompassed five other firms. *See* 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) at 8 n.2. The total lodestar in the case, however, encompasses work from three additional firms, or nine in all. *See* Declaration of Lawrence A. Sucharow in Support of (A) Plaintiffs' Assented-To Motion for Final Approval of Class Settlement and Plan of Allocation and Final Certification of Settlement Class and (B) Lead Counsel's Motion for An Award of Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs, Ex. 24 (ECF No. 104-24) at 2 (Master Chart of Lodestars, Litigation Expenses, and Plaintiffs' Service Awards). This Declaration uses the term "Counsel" as a short-hand reference to all of these firms.

[2] I typically provide a short synopsis of the litigation in my expert reports, but given the post-hoc nature of this report, I have not done so here.

counsel's time in the case. Simultaneously, it improves on the lodestar approach standing alone (which could bog the court down in review of counsel's time records) by enabling a check on the percentage approach without requiring an extensive audit of counsel's hours and rates.

- ***Counsel's billing rates were reasonable.*** (Part III, *infra*). Counsel's fee petition supplied the Court with billing rates for all professional time-keepers. Three sets of comparison data support the conclusion that the rates employed were reasonable: *first*, the rates are consistent with rates that courts in this community have awarded in approving class action fee petitions in recent years; *second*, Counsel's rates fall far below the court-approved rates charged by large corporate firms in bankruptcy cases in this market; and *third,* the blended billing rate for the entire case is consistent with blended billing rates in court-approved fee petitions in class action settlements in this community and in $100-$500 million cases throughout the country.

- ***Counsel appropriately billed non-partnership-track attorneys at market rates and the billing rates employed were reasonable.*** (Part IV, *infra*). Counsel employed non-partnership track attorneys to perform work such as document review and analysis. An empirical analysis of 12 recent cases in which courts have approved fee petitions containing rates for "contract" or "staff" attorneys shows that Counsel's rates for these non-partnership track attorneys are unexceptional: Counsel's blended rate is within pennies of the comparison set's average rate. Public policy also supports Counsel's billing of these non-partnership track attorneys at market rates, not cost, as empirical evidence shows that these attorneys were well-qualified for the legal work that they undertook and as billing at market rates is consistent with how law firms in the private market bill such attorneys, complies with the ABA's suggested ethical approach, and provides the right incentives for plaintiff firms.

- ***Counsel's fee was reasonable, as evidenced by the modest size of the lodestar multiplier***. (Part V, *infra*). The Court-awarded fee embodied a lodestar multiplier (based on Counsel's corrected lodestar) of 2.01. Three sets of data support the reasonableness of a fee that is roughly 2 times greater than Counsel's lodestar: it is below the mean for settlements of this size reported in the leading empirical analyses of class action fee awards, it is below the mean of a comparison group of $100-$500 million settlements, and it is fully consistent with the Court's characterization of the risks Counsel shouldered and the results that they achieved for the class herein.

I am aware of the fact that the fee petition in this case initially contained errors with regard to the lodestar cross-check information submitted to the Court. While those accounting errors were of

course unfortunate, their impact on the lodestar cross-check submission was relatively negligible and did not undermine the reasonableness of the fee Counsel proposed.

I.
BACKGROUND AND QUALIFICATIONS[3]

2. I am the Sidley Austin Professor of Law at Harvard Law School. I graduated from Yale College, *magna cum laude*, in 1982 and from Harvard Law School, *magna cum laude*, in 1986. I clerked for the Hon. Stanley Sporkin in the U.S. District Court for the District of Columbia following my graduation from law school. Before joining the Harvard faculty as a tenured professor in 2007, I was a law professor at UCLA School of Law for a decade, and an adjunct faculty member at Harvard, Stanford, and Yale Law Schools while a litigator in private practice during the preceding decade. I am admitted to practice law in the Commonwealth of Massachusetts, the State of California, the Commonwealth of Pennsylvania (inactive), the District of Columbia (inactive), the U.S. Supreme Court, six U.S. Courts of Appeals, and four U.S. District Courts.

3. My principal area of scholarship is complex civil litigation, with a special emphasis on class action law. I am the author, co-author, or editor of five books and more than a dozen scholarly articles, as well as many shorter publications (a fuller bibliography appears in my c.v., which is attached as Exhibit A). Much of this work concerns various aspects of class action law. Since 2008, I have been the sole author of the leading national treatise on class action law, *Newberg on Class Actions*, and as of this summer, I have re-written from scratch the entire 10-volume treatise. In 2015, I wrote and published a 600-page volume (volume 5) of the Treatise on attorney's fees, costs, and incentive awards; this volume has already been cited in

[3] My full c.v. is attached as Exhibit A.

numerous federal court fee decisions. For five years (2007–2011), I published a regular column entitled "Expert's Corner" in the publication *Class Action Attorney Fee Digest*. My work has been excerpted in casebooks on complex litigation, as noted on my c.v.

4. My expertise in complex litigation has been recognized by judges, scholars, and lawyers in private practice throughout the country for whom I regularly provide consulting advice and educational training programs. For this and the past seven years, the Judicial Panel on Multidistrict Litigation has invited me to give a presentation on the current state of class action law at the annual MDL Transferee Judges Conference. The Ninth Circuit invited me to moderate a panel on class action law at the 2015 Ninth Circuit/Federal Judicial Center Mid-Winter Workshop. The American Law Institute selected me to serve as an Adviser on a Restatement-like project developing the *Principles of the Law of Aggregate Litigation*. In 2007, I was the co-chair of the Class Action Subcommittee of the Mass Torts Committee of the ABA's Litigation Section. I am on the Advisory Board of the publication *Class Action Law Monitor*. I have often presented continuing legal education programs on class action law at law firms and conferences.

5. My teaching focuses on procedure and complex litigation. I regularly teach the basic civil procedure course to first-year law students, and I have taught a variety of advanced courses on complex litigation, remedies, and federal litigation. I have received honors for my teaching activities, including: the Albert M. Sacks-Paul A. Freund Award for Teaching Excellence, as the best teacher at Harvard Law School during the 2011–2012 school year; the Rutter Award for Excellence in Teaching, as the best teacher at UCLA School of Law during the

2001–2002 school year; and the John Bingham Hurlbut Award for Excellence in Teaching, as the best teacher at Stanford Law School during the 1996–1997 school year.

6. My academic work on class action law follows a significant career as a litigator. For nearly eight years, I worked as a staff attorney and project director at the national office of the American Civil Liberties Union in New York City. In those capacities, I litigated dozens of cases on behalf of plaintiffs pursuing civil rights matters in state and federal courts throughout the United States. I also oversaw and coordinated hundreds of additional cases being litigated by ACLU affiliates and cooperating attorneys in courts around the country. I therefore have personally initiated and pursued complex litigation, including class actions.

7. I have been retained as an expert witness in roughly 70 cases and as an expert consultant in about another 25 cases. These cases have been in state and federal courts throughout the United States, most have been complex class action cases, and many have been MDL proceedings. I have been retained to testify as an expert witness on issues ranging from the propriety of class certification to the reasonableness of settlements and fees. I have been retained by counsel for plaintiffs, for defendants, for objectors, and by the judiciary: in 2015, the United States Court of Appeals for the Second Circuit appointed me to brief and argue for affirmance of a district court order that significantly reduced class counsel's fee request in a large, complex securities class action, a task I completed successfully when the Circuit summarily affirmed the decision on appeal. *See In re Indymac Mortgage-Backed Securities Litigation*, 94 F.Supp.3d 517 (S.D.N.Y. 2015), *aff'd sub. nom. Berman DeValerio v. Olinsky*, 673 F. App'x 87 (2d Cir. 2016).

8. My past work encompasses prior *expert witness* work for and against a number of firms involved in this matter and current and past *legal work* on behalf of the Thornton Law Firm LLP (the "Thornton Fim"), including on an issue at the inception of this case. Specifically, in 2011, the Thornton Firm retained me to advise it on the representation of the class in this matter and the separate representation of the *qui tam* relators in actions against State Street and I worked with the firm in that capacity between February 24, 2011 and June 6, 2011. I am also currently assisting the Thornton Firm in a different complex litigation context, again on issues arising out of the representation of multiple parties that are un-related to the billing issues before the Special Master. Until Lieff Cabraser contacted me in March 2017 about the present retention, I had no other involvement in (or even knowledge of the progress of) this fee-related matter. The Thornton Firm has informed me that it has no objection to my appearing as an expert witness on the fee-related issues presently before the Special Master. I similarly believe that my duties to the Thornton Firm arising out of the unrelated 2011work on this case and my present work on an unrelated collateral matter do not interfere with my ability to provide my own independent expert opinions on the present fee-related matter, but I make this disclosure so that the Special Master has full information. Finally, as is more readily evident from the cases listed on my resume, Labaton Sucharow, Lieff Cabraser, and Keller Rohrback LLP ("Keller Rohrback") have each previously retained me as an expert witness in class action cases. I have also been retained as an expert witness by parties adverse to the Lieff Cabraser firm, or to Plaintiffs' Steering Committees on which it served, or to its clients in about five cases and I worked as court-appointed counsel against a group of plaintiffs' firms, including Lieff Cabraser, arguing for affirmance of a reduced fee award in the Second Circuit, as referenced in the prior paragraph.

9. I have been retained in this case to provide an opinion concerning the issues set forth in the first paragraph, above. I am being compensated for providing this expert opinion. I was paid a flat fee in advance of rendering my opinion, so my compensation was in no way contingent upon the content of my opinion.

10. In analyzing these issues, I have discussed the case with the counsel who retained me. I have also reviewed documents from this and related litigations, a list of which is attached as Exhibit B. I have also reviewed the applicable case law and scholarship on the topics of this Declaration.

11. Additionally, my research assistants, under my direction, have compiled four sets of data relevant to my analysis and ultimate opinions:

- a data set of 20 cases reflecting billing rates that judges in the District of Massachusetts – and in Massachusetts state courts – have approved in ruling on class action fee requests in the past dozen years (Exhibit C);
- a data set of six fee petitions containing 169 rates utilized by corporate firms in bankruptcy cases that Massachusetts bankruptcy courts have approved in recent years (Exhibit D);
- a data set of 20 class action settlements with aggregate settlement values of $100-$500 million (Exhibit E);
- a data set of 12 class action cases in which courts throughout the country have approved fee petitions that contain billing rates for "contract lawyers" or "staff attorneys" in recent years (Exhibit F).

II.
COUNSEL'S FEE APPROACH IS THE MOST WIDELY USED APPROACH TO FEES IN COMMON FUND CLASS ACITONS

12. Counsel sought a fee of approximately $74.5 million (ECF No. 102 at 2) and they demonstrated the reasonableness of that request according to a percentage approach (with

multiple factors) and a lodestar cross-check. (ECF No. 103-1). Empirical evidence shows that this is the most common approach courts take to fees.[4]

13. Specifically, the most fine-grained data of fee awards demonstrates that courts use a pure lodestar approach in 9.6% of cases, a pure percentage approach in 37.8% of cases, and a mix of the two (typically, a percentage approach with a lodestar cross-check) in 42.8% of cases, with another 9.8% of cases employing some other method or not specifying which method.[5]

14. I explain in the *Newberg* treatise how these current practices developed.[6] After adoption of the current class action rule in 1966, courts tended to employ a percentage approach to fees, but a 1973 decision of the Third Circuit endorsed an hourly approach, labeling it the

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[4] It is also consistent with the law in the First Circuit. In reporting on First Circuit law in the *Newberg* treatise, I wrote:

1. *Percentage or lodestar fee method.* The First Circuit gives its district courts discretion as to whether to use a percentage or lodestar method.
2. *Reasonableness review criteria.* The First Circuit has not identified any particular list of factors for assessing the reasonableness of proposed percentage awards in common fund cases, instead holding that the district courts—when employing the percentage method—should award fees on an individualized, case-by-case basis. District courts in the First Circuit have sometimes utilized the multifactor tests used in the Second and Third Circuits and at other times have employed the Seventh Circuit's market mimicking approach.
3. *Lodestar cross-check.* The First Circuit has held that a lodestar cross-check is entirely discretionary.

5 William B. Rubenstein, Newberg on Class Actions § 15:96 (5th ed.) (2015) (footnotes omitted) (hereafter *Newberg on Class Actions*).

[5] *See* 5 *Newberg on Class Actions, supra* note 4, at § 15:67 (reporting on data from Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical Legal Stud. 248, 272 (2010) (hereafter "Eisenberg and Miller II")).

[6] 5 *Newberg on Class Actions, supra* note 4, at § 15:64.

"lodestar" method,[7] and many courts began to utilize that method. In response to concerns engendered by the lodestar method, the Third Circuit convened a Task Force consisting of a cross-section of lawyers, judges, and scholars, all with expertise in the area of class action attorney's fees, to develop – in a neutral, non-investigatory setting – a set of best practices.[8] The Task Force concluded that a (negotiated) percentage method was the preferable approach for fee awards in common fund cases and many courts subsequently moved toward a percentage approach to awarding fees in common fund cases. By 2004, the *Manual for Complex Litigation* stated that "[a]fter a period of experimentation with the lodestar method … the vast majority of courts of appeals now permit or direct district courts to use the percentage-fee method in common-fund cases."[9] Yet, since the *Manual* made that statement, empirical evidence demonstrates that courts have moved to something of a hybrid: a percentage approach with a lodestar cross-check. Thus, in cases from 1993–2002, 56.4% of courts used the pure percentage, while in cases from 2003–2008 cases, only 37.8% did.[10] This is about a one-third decrease in the use of the pure percentage approach. The big gain was in courts' use of the mixed approach – it shot up about 75% from the first period to the second, growing from 24.3% of cases to 42.8% of cases.

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[7] *Lindy Bros. Builders, Inc. of Phila. v. American Radiator & Standard Sanitary Corp*., 487 F.2d 161, 168-69 (3d Cir. 1973).

[8] For a description of the Task Force's membership and methodology, see Report of the Third Circuit Task Force, *Court Awarded Attorney Fees*, 108 F.R.D. 237, 253-54 (1985).

[9] Federal Judicial Center, *Manual for Complex Litigation, Fourth*, § 14.121 (2004) (citations omitted).

[10] *See* 5 *Newberg on Class Actions, supra* note 4, at § 15:67 (reporting on data from Eisenberg and Miller II, supra note 5, and Theodore Eisenberg & Geoffrey P. Miller, Attorney Fees in Class Action Settlements: An Empirical Study, 1 J. Empirical Legal Stud. 27, 52 (2004) (hereafter "Eisenberg and Miller I")).

15. This approach is favored because it improves on either approach standing alone.[11] The percentage approach without a lodestar cross-check could lead to counsel securing a windfall. A lodestar approach standing alone could engross the court in an unnecessary audit of counsel's hours and rates, as the entire fee turns on the specific time billed. By contrast, using a lodestar cross-check enables a court to make a rough estimate of counsel's lodestar for the sole purpose of ensuring against a windfall.[12] A review of counsel's lodestar is appropriate, but over-emphasis on it – especially in a case of this magnitude, involving so many lawyers throughout the country – could bog the court down in unnecessary detail.

16. In a recent case in the California Supreme Court, I submitted my own *amicus* brief advocating for the Court to encourage the use of a lodestar cross-check. The Court embraced my brief, writing the following:

> The utility of a lodestar cross-check has been questioned on the ground it tends to reintroduce the drawbacks the 1985 Task Force Report identified in primary use of the lodestar method, especially the undue consumption of judicial resources and the creation of an incentive to prolong the litigation. We tend to agree with the amicus curiae brief of Professor William B. Rubenstein that these concerns are likely overstated and the benefits of having the lodestar cross-check available as a tool outweigh the problems its use could cause in individual cases.
>
> With regard to expenditure of judicial resources, we note that trial courts conducting lodestar cross-checks have generally not been required to closely scrutinize each claimed attorney-hour, but have instead used information on attorney time spent to "focus on the general question of whether the fee award appropriately reflects the degree

[11] For a defense of the lodestar cross-check method, and a discussion of the points in this paragraph, see 5 *Newberg on Class Actions, supra* note 4, at § 15:86.

[12] Courts in nearly every Circuit have noted the summary nature of the lodestar cross-check. *See id.* at n.13 (collecting cases, including cases from within this Circuit) (citing, *inter alia*, *In re Tyco Intern., Ltd. Multidistrict Litigation*, 535 F. Supp. 2d 249, 273 (D.N.H. 2007) ("'The lodestar cross-check calculation need entail neither mathematical precision nor bean-counting.'" (quoting *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 306, 60 Fed. R. Serv. 3d 851 (3d Cir. 2005), as amended, (Feb. 25, 2005))).

> of time and effort expended by the attorneys." 5 Newberg on Class Actions, supra, § 15:86, p. 331. . . The trial court in the present case exercised its discretion in this manner, performing the cross-check using counsel declarations summarizing overall time spent, rather than demanding and scrutinizing daily time sheets in which the work performed was broken down by individual task. Of course, trial courts retain the discretion to consider detailed time sheets as part of a lodestar calculation, even when performed as a cross-check on a percentage calculation.
>
> As to the incentives a lodestar cross-check might create for class counsel, we emphasize the lodestar calculation, when used in this manner, does not override the trial court's primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the potential fee award. If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment. Courts using the percentage method have generally weighed the time counsel spent on the case as an important factor in choosing a reasonable percentage to apply. (5 Newberg on Class Actions, supra, § 15:86, pp. 332–333. . .). A lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court's reasonableness determination; as such, it is not likely to radically alter the incentives created by a court's use of the percentage method.[13]

17. In sum, the percentage approach with a lodestar cross-check is, empirically speaking, the fee method courts utilize most often in common fund cases, and they do so for sound policy reasons. The approach Counsel took in its fee petition in this case was therefore fully consistent with normal practice in common fund class actions.

18. Because Counsel submitted their lodestar for cross-check purposes, not for the purposes of setting an exact fee based on the lodestar, the error in their lodestar calculation does not mean that the fee awarded was necessarily in error: the lodestar was a means not an end. The critical question is the effect that the lodestar error had on the cross-check. As Counsel reported in correcting it, the lodestar error meant that their multiplier in the case was approximately 2 rather than 1.8 (ECF No. 116 at 3). As I discuss below, utilizing empirical

[13] *Laffitte v. Robert Half Intern. Inc.*, 376 P.3d 672, 687-88 (Cal. 2016) (some citations omitted).

evidence of multipliers, this difference in the context of this case was not significant (Part V, *infra*). This is not, of course, to excuse the mistake. It is, rather, to place the mistake in its proper context.

III.
COUNSEL'S BILLING RATES WERE REASONABLE

19. To investigate the reasonableness of Counsel's billing rates, I utilize empirical evidence to generate three independent comparison sets:

- I compare the hourly rates for each timekeeper in this case to hourly rates that courts in this District (and in Massachusetts state court) have awarded in approving class action fee petitions in recent years.

- I compare the hourly rates for each timekeeper in this case to the hourly rates that defense firms charge for similar work in this market, as evidenced by rates Massachusetts bankruptcy courts have approved in recent years.

- I compare the blended billing rate for this case to the blended billing rate of other class action cases in this District and to other class action cases involving $100-$500 million settlement funds.

20. I have chosen to compare Counsel's billing rates to rates other class action (and bankruptcy) courts have approved because it is my expert opinion that such court-sanctioned rates provide the best comparison group. The primary reason they are the best comparable evidence is that class action attorneys make a living getting paid by their clients through court-approved fee petitions;[14] thus the "market" rates for their services are generally the rates that

[14] Given this fact, I found unambiguous the statements in this case's fee declarations that the "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, which have been accepted in other complex class actions." *E.g.*, 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 at ¶ 7 (Sept. 15, 2016). I read "regular rates charged" as meaning that these were rates submitted in class action fee petitions, a reading confirmed by the succeeding clause's statement that the rates had been "accepted [by courts] in other complex class actions."

courts approve for their services.[15] Other ways of assessing the reasonableness of the hourly rates in cross-check submissions include the following:

- Occasionally, lawyers will submit, and courts rely on, affidavits from other lawyers in the community about prevailing rates.[16] Such affidavits have the benefit of being sworn to under penalty of perjury, and therefore likely provide accurate reporting on the rates included in them, but they may not represent a fair cross-section of evidence given the manner in which they are produced.[17]

- Occasionally lawyers will present evidence collected from surveys such as the *National Law Journal* survey. A few courts have deemed survey evidence sufficient for lodestar cross-check purposes because the cross-check "does not involve bean counting or mathematical precision."[18] Nonetheless, survey evidence is notoriously unreliable for multiple reasons: (a) the survey drafters can skew answers – even inadvertently – simply in the way questions are drafted; (b) results are often reported by attorney type (junior associate, senior partner, etc.) and with bands of rates so that tailored comparisons are impossible; (c) survey respondents, unlike lawyers filing fee petitions, do not sign survey responses under the penalty of perjury; and (d) most problematically, surveys embody a selection bias in that they may neither be sent to nor responded to by an appropriate comparison group; this is particularly a problem in that (e) the nature, legitimacy, and transparency of the organization undertaking the survey – and the context in which the survey is taken – will have a significant effect

[15] For this reason, the Second and Ninth Circuit have criticized the Seventh Circuit's belief that there is some other market approach to class action attorney's fees. *See* 5 *Newberg on Class Actions*, *supra* note 4, at § 15:79 ("'[T]o the extent that a market analogy is on point, in most cases it may be more appropriate to examine lawyers' reasonable expectations, which are based on the circumstances of the case and the range of fee awards out of common funds of comparable size.'") (quoting *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1049–50 (9th Cir. 2002)).

[16] *See, e.g., Bellinghausen v. Tractor Supply Co*., 306 F.R.D. 245, 262 (N.D. Cal. 2015) ("[E]vidence of prevailing market rates may include affidavits from other area attorneys.").

[17] *Cotton v. City of Eureka*, 889 F. Supp. 2d 1154, 1167 (N.D. Cal. 2012) (finding declarations from other attorneys unhelpful for being too general); *Wilhelm v. TLC Lawn Care, Inc*., No. CIV. A. 07-2465-KHV, 2009 WL 57133, at *5 (D. Kan. Jan. 8, 2009) (agreeing with defendant's contention that "the affidavits of other plaintiffs' attorneys should be disregarded because they are self-serving" and "contradict plaintiffs' other evidence").

[18] *In re Schering-Plough Corp*., No. CV 08-397 (DMC)(JAD), 2013 WL 12174570, at *28 n. 27 (D.N.J. Aug. 28, 2013), report and recommendation adopted sub nom. *In re Schering-Plough Corp. Enhance Sec. Litig*., No. CIV.A. 08-2177 DMC, 2013 WL 5505744 (D.N.J. Oct. 1, 2013).

on who responds to the survey and how. Accordingly, courts are often quite skeptical of such evidence.[19]

- Occasionally courts rely on something called the *Laffey* Matrix[20] – particularly in fee-shifting cases in the District of Columbia – but this is a disfavored approach and one that I am quite critical of for a host of reasons.[21]

In short, as the goal of this endeavor is to ascertain proper billing rates for lawyers pursuing class action lawsuits, I agree with the many courts that have found that the best comparable evidence are rates that other courts have approved for class action work.[22]

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[19] *See In re: Sears, Roebuck & Co. Front-loading Washer Prod. Liab. Litig.*, No. 06 C 7023, 2016 WL 4765679, at *14 (N.D. Ill. Sept. 13, 2016) (noting "skepticism" amongst courts about applying survey rates that fail to differentiate large and small firms); *Forkum v. Co-Operative Adjustment Bureau, Inc.*, No. C 13-0811 SBA, 2014 WL 3101784, at *4 (N.D. Cal. July 3, 2014) (finding a fee survey "largely unhelpful in determining the reasonable hourly rates for the attorneys that worked on this case" because it is "not [a] reliable measure[] of rates in [the court's District] because [it] provide[s] no data on the prevailing hourly rates charged in this District"); *Lorik v. Accounts Recovery Bureau, Inc.*, No. 1:13-CV-00314-SEB, 2014 WL 1256013, at *2–3 (S.D. Ind. Mar. 26, 2014) (criticizing the "fairly obvious facial weaknesses" in a fee survey, such as insufficient sample size, lack of detailed geographical differentiation, and response bias, and finding "[t]he customary and judicially preferred standard by which the reasonableness of hourly rates is measured ordinarily comes from [evidence of rates charges by] . . . other lawyers who regularly practice in a particular geographical area and who provide similar or comparable legal services"); *California Durham v. Cont'l Cent. Credit*, No. 07CV1763 BTM WMC, 2011 WL 6783193, at *2 n.1 (S.D. Cal. Dec. 27, 2011) (finding a fee survey "is of limited usefulness because [it] does not beak down the hourly rates by region within California").

[20] The matrix originated in *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983).

[21] *See* 5 *Newberg on Class Actions*, supra note 4, at § 15:43.

[22] *See, e.g., Van Horn v. Nationwide Prop. & Cas. Ins. Co.*, 436 F. App'x 496, 498–99 (6th Cir. 2011) (noting that courts should determine reasonable hourly rates by looking to, *inter alia*, the rates used in analogous cases); *Plyler v. Evatt*, 902 F.2d 273, 277 & n.2 (4th Cir. 1990) (noting courts should weigh a fee applicant's hourly rates against the prevailing market rates in the relevant community, which looks to, *inter alia*, "attorneys' fee awards in similar cases"); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 262 (N.D. Cal. 2015) (noting evidence of prevailing market rates includes affidavits from area attorneys and "examples of rates awarded to counsel in previous cases"); *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 756 (S.D. Tex. 2008) (noting Fifth Circuit courts determine whether an hourly rate is reasonable by looking to affidavits from other attorneys in the community and "rates actually

Court-approved rates in Massachusetts class action cases

21. For purposes of this Declaration, I utilized a database of 481 fee rates contained in 20 class action fee petitions approved by federal and state courts in Massachusetts in recent years.[23] A list of these cases is attached as Exhibit C. For each timekeeper, my research assistants identified the timekeeper's initial year of admission to the bar either by using the information in the fee petition or, if the information was not listed therein, by examining the firm's website and/or the relevant state bar website. As the fee petition herein was submitted in 2016, we adjusted all hourly rates in prior cases to 2016 dollars using the U.S. Bureau of Labor CPI Inflation Calculator.[24] Once each timekeeper's experience level had been identified and all of the dollar amounts had been set at 2016 levels, we plotted the rates on an x-y axis, with the x-

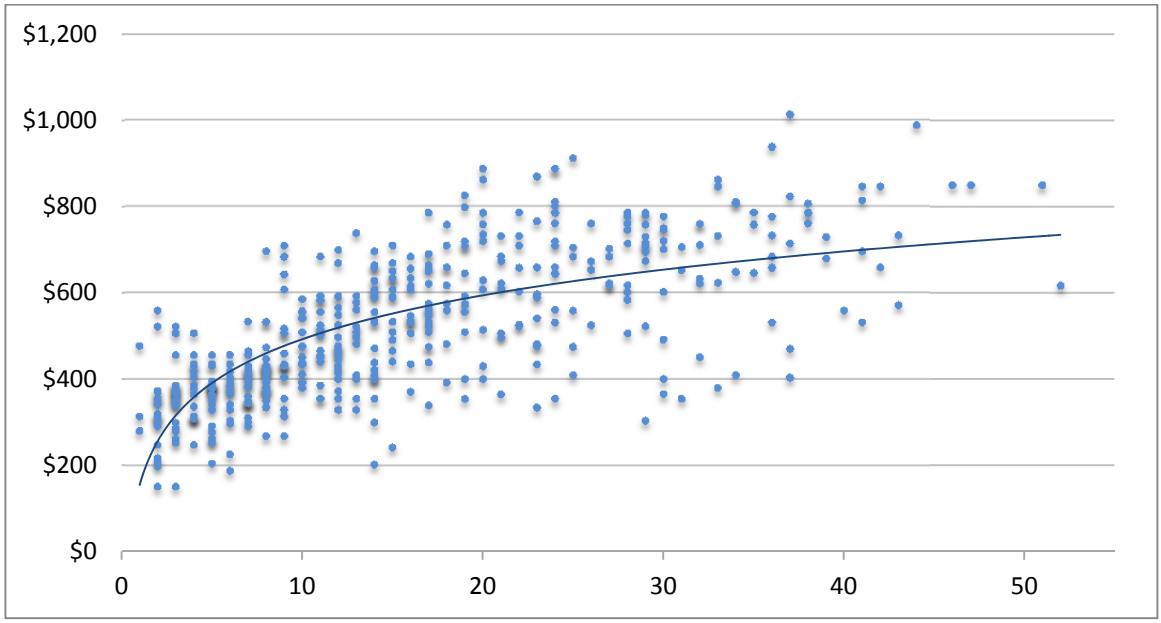
billed and paid in similar lawsuits"); *Faircloth v. Certified Fin. Inc*., No. CIV. A. 99-3097, 2001 WL 527489, at *10 (E.D. La. May 16, 2001) (looking to "decisions of other courts in this jurisdiction" to determine a proposed hourly rate was reasonable).

[23] I originally compiled this dataset for my 2016 work as an expert witness on attorney's fees in a case entitled, *Geanacopoulos v. Philip Morris USA Inc*., No. 98-6002-BLS1 (Mass. Super.). To do so, I searched for reported fee decisions of Massachusetts courts (state and federal) in class action cases. Employing a neutral search sequence on Westlaw, I identified a total of 54 decisions since January 1, 2005. I read through all 54 decisions; some were not class action cases, some were not fee decisions, and some did not enable a review of the utilized hourly rates. A total of 18 of the cases met all these criteria and became the baseline for my rate study. In some of these 18 cases, counsel sought an award lower than their total lodestar and/or the court made an award lower than the total lodestar. So long as the court did not express concern about counsel's proposed billing rates in affirming the fee request, I coded these rates as affirmed, or judicially-approved, rates and included them in the data set. If a court explicitly lowered a specific billing rate, I utilized the lower rate in the data set. For purposes of this Declaration, my research assistants updated that dataset in two ways: we added the rates employed in that prior case as the court approved that fee petition and we searched for newer cases using the same criteria and identified one such case to add to the database.

[24] This calculator can be found at this hyperlink: http://data.bls.gov/cgi-bin/cpicalc.pl. For each year prior to 2016, we calculated the differential between $1,000 in that prior year and $1,000 in 2016. We then used that differential to calculate the 2016 rate for the prior year. For example, the calculator showed that $1,000.00 in January of 2015 was equivalent to $1,013.73 in January of 2016. Accordingly, we multiplied all 2015 rates by 1.01373 to adjust them to 2016 values.

axis representing the years since the timekeeper's admission to the bar and the y-axis representing the timekeeper's hourly rate. The resulting scatter plot, set forth below in Graph 1, provides a snapshot of hourly rates in judicially-approved fee applications in Massachusetts; the blue logarithmic trend line sketches the trend of these rates across experience levels.

GRAPH 1
HOURLY RATES IN JUDICIALLY-APPROVED FEE APPLICATIONS IN MASSACHUSETTS CLASS ACTION CASES



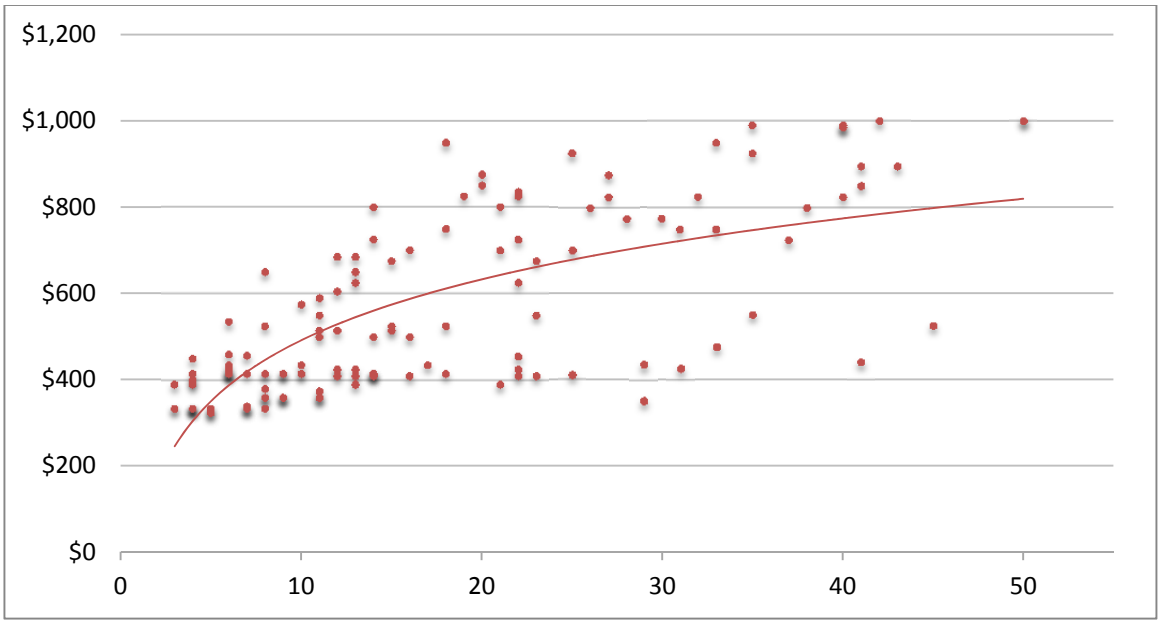
22. My research assistant next plotted the rates utilized by Counsel in this matter. Counsel supplied us with corrected lodestar data for three firms,[25] containing billing rates[26] for 103 lawyers. For the remaining six firms, we used the submissions they made at the time of the

[25] These are: Labaton Sucharow; Lieff Cabraser; and the Thornton Firm.

[26] Counsel utilize their current rates for all time spent in the litigation. The law supports using current rates as "an appropriate adjustment for delay in payment," *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989). In my experience, this is typically how this issue is handled. It is my opinion that it is reasonable for Counsel, who had not been paid in the nearly six years that this case was pending, to use current hourly rates as an adjustment for the delay in payment.

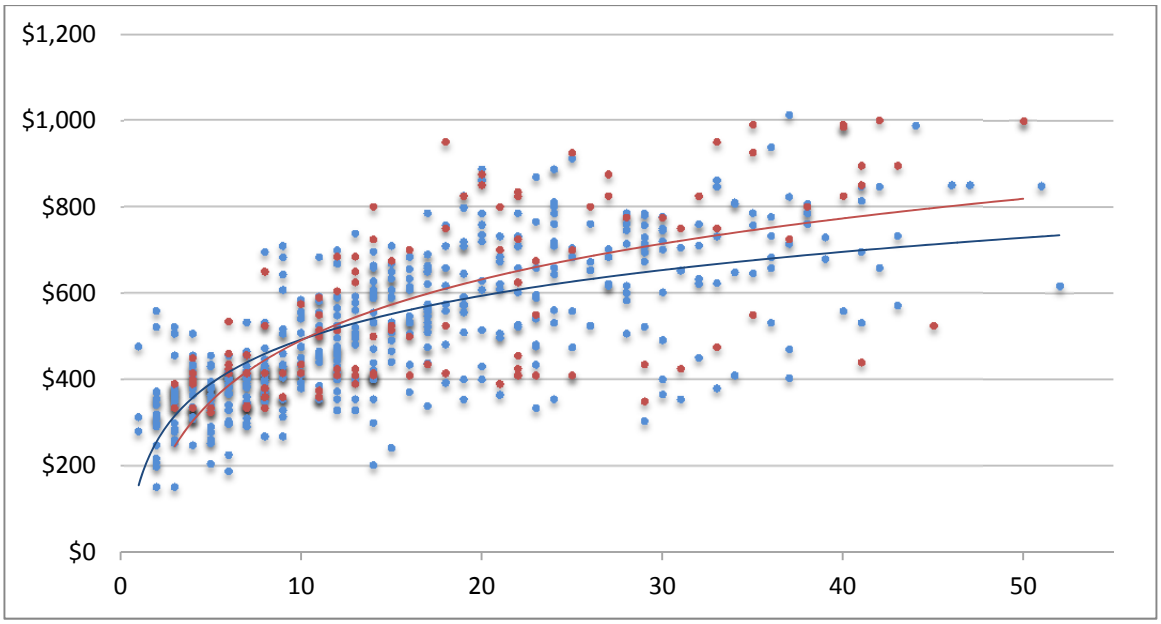
fee petition, which contained rates for 38 lawyers, bringing the total number in this data set to 141. After identifying the year of admission to the bar for each such timekeeper, we plotted these rates onto the same type of x-y axis that we had employed for the Massachusetts comparison set. The resulting scatter plot, set forth below in Graph 2, provides a snapshot of Counsel's billing rates, with the red logarithmic trend line sketching the trend of Counsel's rates across experience levels.

GRAPH 2
COUNSEL'S HOURLY RATES



23. Finally, we aggregated the data from Graphs 1 and 2 onto a single scatter plot that indicates the judicially-approved rates in Massachusetts with blue dots and a blue logarithmic line and Counsel's proposed rates with red dots and a red logarithmic line. These data appear in Graph 3, below.

GRAPH 3
COUNSEL'S HOURLY RATES COMPARED TO
HOURLY RATES IN JUDICIALLY-APPROVED FEE APPLICATIONS
IN MASSACHUSETTS CLASS ACTIONS



24. As Graph 3 demonstrates, the two logarithmic trend lines track one another closely. For lawyers with fewer than about 11 years of experience, Counsel's trend line lies below the trend line for rates in approved Massachusetts class action fee petitions, and then among more senior lawyers, Counsel's trend line rises slightly above the trend line of the comparison group. The proposed rates for 76 of Counsel's 141 lawyers (53.9%) are below the Massachusetts trend line. When the differences between the trend lines are compared at all 141 points, Counsel's trend line is, on average, 1.01% above the trend line for rates in approved Massachusetts class action fee petitions. This means that Counsel's proposed rates are, across the board, virtually identical to the rates that judges in Massachusetts have approved for similar work – other class action litigation – by similarly experienced attorneys.

25. The portion of Counsel's trend line that is above the comparison trend line exceeds the comparison by an average of 6.32%. That Counsel's trend line across their senior lawyers in this case is roughly 6% above the average lawyers' trend line makes perfect sense for two inter-related reasons. *First*, Labaton Sucharow, Lieff Cabraser, and Keller Rohrback are three of the leading class action firms in the United States, and the Thornton Firm is a premier firm in this market with a similar high profile throughout the country. The lawyers at these firms possess years of remarkable experience, have track records of superb achievement, and can be counted among the elite of the profession generally and this area of law specifically. As the comparison set picks up a range of approved class action cases in this community, it encompasses lawyers with far less expertise undertaking far more mundane matters. Indeed, *second*, one would expect higher than average billing rates in a case of this magnitude – a $300 million class action against one of the largest banks in the United States[27] and defended by one of the largest law firms in the United States.[28] Accordingly, if there is any surprise in the data it is only that the trend line across these senior lawyers is but 6% above the trend line of the wide swath of lawyers with different skill levels who are represented in the comparison group.

26. In comparing Counsel's rates to Boston rates, I have not adjusted the rates from the non-Boston firms in this case to Boston levels. I have not done so because this is a level of detail generally beyond what is undertaken for lodestar cross-check purposes.[29] In lodestar cross-check cases, courts occasionally cite the standard, borrowed from fee-shifting

[27] State Street Bank is #271 on the Fortune 500 in 2017. This data point is available at hyperlink: http://fortune.com/fortune500/state-street-corp/.

[28] Wilmer Hale is the 26th largest large firm by revenue in the United States. This data point is available at hyperlink: https://en.wikipedia.org/wiki/List_of_largest_law_firms_by_revenue.

[29] *See* note 12, *supra.*

jurisprudence, that rates should be "those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation."[30] I am not aware of any appellate decisions mandating this approach for lodestar cross-check purposes in common fund cases, and it is a step rarely undertaken.[31] Nonetheless, if I were to do so, the rates for most timekeepers would decrease: application of a judicially-endorsed approach to adjusting lawyer rates by geographic market[32] would require decreasing the San Francisco rates (Lieff Cabraser) by 8.3%, the New York rates (Labaton Sucharow) by 3.4%, and the Washington, D.C. rates (McTigue Law LLP, Zuckerman Spaeder LLP, Beins Axelrod PC) by 0.3%, while increasing the

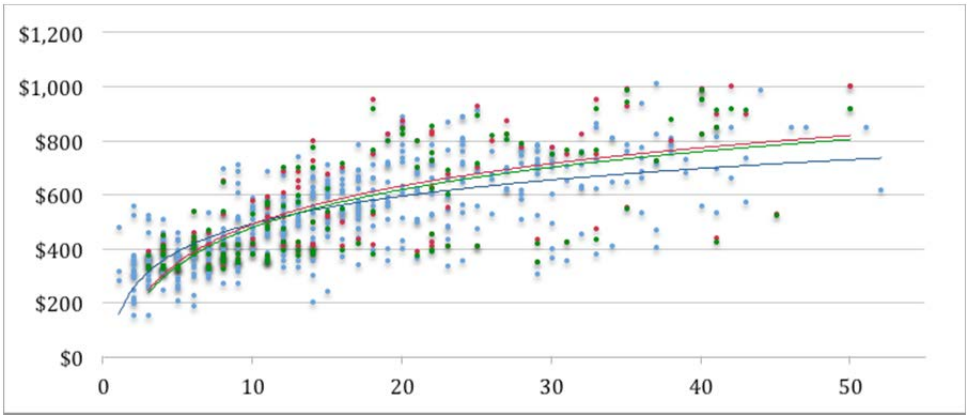
[30] *Martinez-Velez v. Rey-Hernandez*, 506 F.3d 32, 47 (1st Cir. 2007) ("Part of the fees calculation is the selection of an appropriate hourly rate for each attorney. Rates should be 'those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.'" (quoting *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984))).

[31] A search for the term "lodestar cross-check" in all federal cases returns 732 cases, while adding the phrase "and prevailing in the community for similar services" to the search returns a total of 51 cases. Of those 51 cases, only 11 involve a court holding that counsel should use local rates for purposes of a lodestar cross-check; nine of these 11 cases involve courts in the Eastern District of California insisting that lawyers from Los Angeles or San Francisco utilize Fresno rates. This means that outside of Fresno, a total of three of 732 reported cases (or .27%) in this search string insist upon geographic adjustment in the lodestar cross-check context (1.5% if Fresno is included). Even that miniscule percentage is likely exaggerated because there are thousands of lodestar cross-check decisions not reported on Westlaw and the reported cases likely select for aberrations of this type.

[32] I utilize the federal government's judicial differential methodology to adjust rates between different geographic markets, as set forth in *In re HPL Techs., Inc. Sec. Litig.*, 366 F. Supp. 2d 912, 921 (N.D. Cal. 2005). The federal government rates can be found at this hyperlink: http://www.uscourts.gov/careers/compensation/judiciary-salary-plan-pay-rates. The federal government increases the base rate by 26.73% for the Boston market, by 31.22% for the New York market, by 38.17% for the San Francisco market, by 27.10% for the D.C. market, by 24.24% for the Seattle market, and by 15.65% for the North/South Carolina market. This means that a base hourly rate of, say, $350/hour would be worth $443.56 in Boston ($350 x 1.2673) and $459.27 in New York ($350 x 1.3122). Therefore, one would have to multiply New York billing rates by 0.96579 ($459.27 x 0.96579=$443.56) to bring them down to Boston levels. The same conclusion can be achieved by the formula: <1-(1.2673/1.3122)>. I apply this approach for each market.

Seattle (Keller Rohrback) and South Carolina (Richardson Patrick Westbrook & Brickman LLC) rates by 2.0% and 9.6%, respectively. In Graph 4, below, these new geographically-adjusted rates are added to the prior graph: the Massachusetts-approved rates remain in blue, Counsel's unadjusted rates remain in red, and Counsel's rates adjusted to the Boston market appear in Celtic green. There is also a new green trend line for the geographically adjusted rates, but overall the rates drop so slightly that it is difficult to see the deviation of the green line's adjusted rates from the red line's unadjusted rates.

GRAPH 4
COUNSEL'S HOURLY RATES ADJUSTED TO BOSTON MARKET COMPARED TO COUNSEL'S UNADJUSTED HOURLY RATES AND HOURLY RATES IN JUDICIALLY-APPROVED FEE APPLICATIONS IN MASSACHUSETTS CLASS ACTIONS



Put most simply, adjusting for geography, Counsel's overall lodestar decreases by a total of 3.18%. While this means that Counsel's lodestar multiplier simultaneously increases, the increase is so small – from 2.01 to 2.07 – that the multiplier remains well within the range of reasonableness, as discussed below.[33] The small and immaterial effect of all this (geographic-

[33] *See* Part V, *infra.*

correction) work is precisely the reason that courts do not demand that it be undertaken in the cross-check setting.

27. In sum, the prior paragraphs demonstrate empirically that the rates that Counsel utilized in their lodestar cross-check submission in September 2016 were fully consistent with rates courts in Boston had explicitly or implicitly approved in awarding fees in class action cases.

Defense Firm Rates

28. Another relevant set of data concerning rates "prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation,"[34] is the set of rates charged by large corporate defense firms. It is these large corporate firms – like Wilmer Hale in this case – that defend significant class action cases like this one; these firms therefore provide the services most comparable to the services that the plaintiffs' lawyers provide in these cases, utilizing reasonably comparable skills and calling on reasonably comparable experience.[35] Since corporate firms typically have private fee arrangements with their clients, the most public – and reliable – evidence of the rates that these firms charge appears in fee petitions submitted by them in bankruptcy cases.[36] For purposes of this Declaration, I

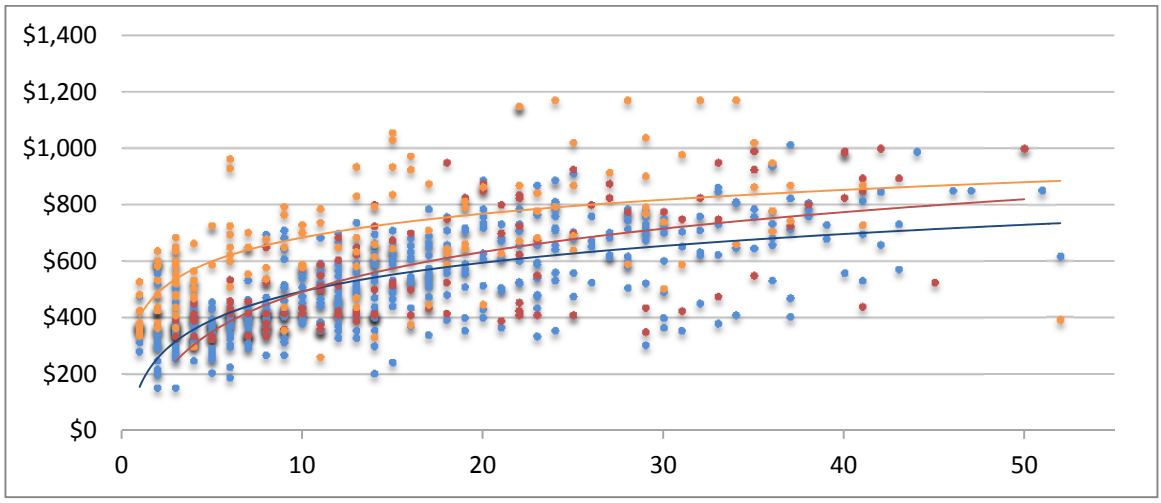
[34] *Martinez-Velez*, 506 F.3d at 47.

[35] There are of course some differences between plaintiff firms running large complex class actions and defendant firms defending such cases, but what is not different is that the two sets of firms are litigating the same cases against one another.

[36] I find these rates the most reliably comparable for four independent reasons. *First*, unlike rates reported in publications like the *National Law Journal*, these rates are provided lawyer-by-lawyer, not in ranges based on job types (like junior associates, or senior associates). *Second*, counsel seeking court approval for these rates swear to their accuracy. *Third*, in the bankruptcy context, the petitioning lawyers specifically represent that the rates they are using are the same rates that they use outside of the bankruptcy context. *See* 11 U.S.C. § 330(a)(3) (directing bankruptcy courts awarding attorneys' fees to take into account "all relevant factors, including . . . whether compensation is reasonable based on the customary compensation charged by

utilized a database of 169 fee rates contained in six fee petitions approved by bankruptcy courts in Massachusetts in five cases in recent years.[37] A list of those cases is attached as Exhibit D. Using orange dots and an orange logarithmic trend line, we plotted these rates (adjusted to 2016 dollars) onto the same x-y axis that contained the Massachusetts approved rates (in blue) and Counsel's rates (in red). The results are reflected in Graph 5, below.

GRAPH 5
CORPORATE FIRM RATES COMPARED TO BOTH HOURLY RATES IN JUDICIALLY-APPROVED FEE APPLICATIONS IN MASSACHUSETTS CLASS ACTIONS AND TO COUNSEL'S HOURLY RATES



comparably skilled practitioners in cases other than cases under this title"). *Fourth*, the type of work – providing legal services to a group of absent creditors in a piece of complex litigation – is generally analogous to what class action attorneys do.

[37] My research assistants consulted Chambers and Partners rankings to create a list of leading corporate firms. They then searched for these firms by name on Westlaw, filtering for cases in Bankruptcy Courts in the District of Massachusetts after 2009. When one of the firms on the Chambers list was named as counsel for one of the parties in a Westlaw case, my research assistants searched PACER for a fee petition filed by that firm. Four cases yielded five usable fee petitions; a fifth case, the Houghton Mifflin Harcourt bankruptcy, was found by searching for large bankruptcies in Massachusetts. My research assistants utilized every petition they found meeting these criteria.

As is visually evident, judicially-approved defense firm rates are significantly higher than the rates in judicially-approved fee applications for class action attorneys in Massachusetts and similarly far higher than Counsel's rates herein. Indeed, when the differences between the trend lines are compared at all 141 points in Counsel's fee petition, the defense firm rates are, on average, 37.53% above the trend line for Counsel's rates.

Blended Rate

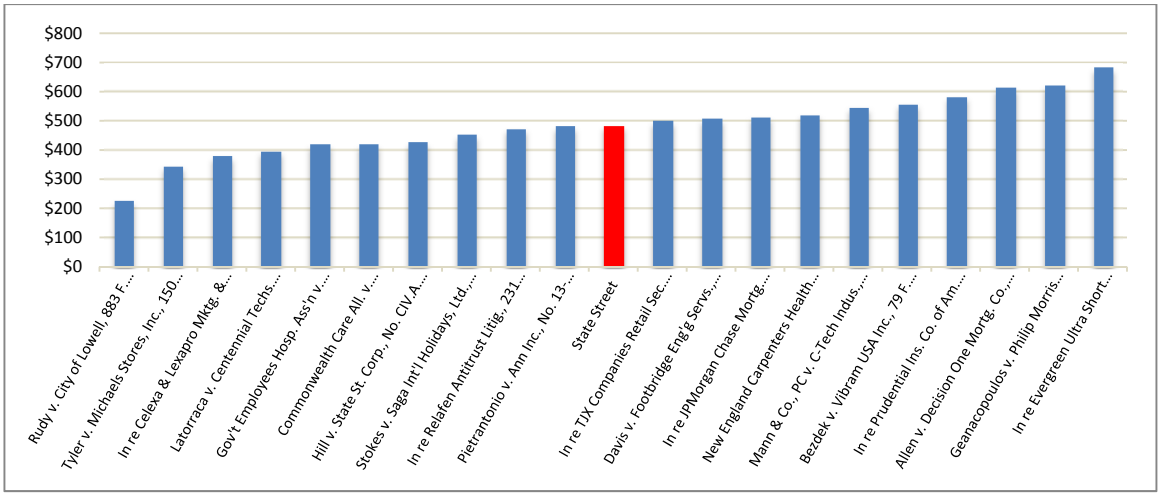
29. Counsel's blended billing rate[38] for the entire case – utilizing the corrected lodestars of the Labaton, Lieff Cabraser, and Thornton firms – is $484.70.[39] A quantitative analysis of this blended billing rate confirms its reasonableness.

30. To assess the reasonableness of the blended billing rate, I directed my research assistants to extract the blended billing rate from the 20 Massachusetts federal and state class action fee approvals that we had collected for this rate study. The blended billing rate (again adjusted to 2016 dollars) in these cases ranged from a low of $227.51/hour to a high of $683.24/hour. The mean rate for these 20 cases is $484.05. The complete range of blended billing rates is reflected in Graph 6, below, with the blended billing rate in this case highlighted in red. As the Court can see, the blended billing rate in this case ($484.70) is just at the median of the graph and 65 cents, or 0.13%, above the mean, demonstrating its normalcy.

[38] A blended billing rate is captured by simply dividing the total lodestar by the total number of hours worked, thus providing the average hourly billing rate for the case across all timekeepers ranging from high-end partners to paralegals.

[39] If the rates are adjusted for geographic markets, *see supra* ¶ 26, the blended rate for this case falls to $469.29.

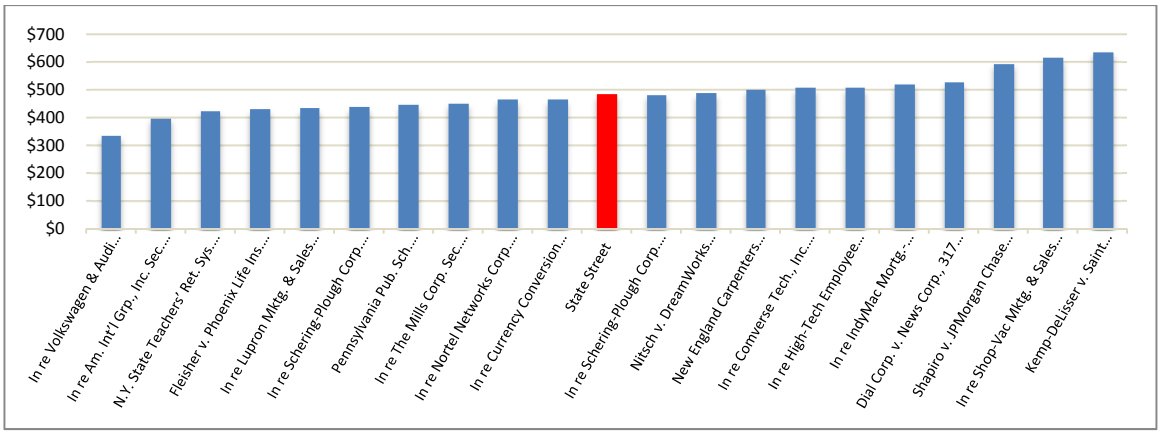
GRAPH 6
COUNSEL'S BLENDED BILLING RATES COMPARED TO BLENDED BILLING RATES IN RECENT MASSACHUSETTS CLASS ACTION FEE APPROVALS



31. Because the blended billing rates in the Massachusetts cases tend to have emerged from smaller settlements (this is one of the largest settlements in Massachusetts history), I also compared the blended billing rate in this $300 million settlement to blended billing rates in 20 other settlements of comparable size ($100-$500 million). A list of those cases is attached as Exhibit E.[40] The blended billing rate (again adjusted to 2016 dollars) in these cases ranged from a low of $338.07/hour to a high of $637.67/hour. The mean rate for these 20 cases is $484.67. The complete range of blended billing rates is reflected in Graph 7, below, with the blended billing rate in this case highlighted in red.

[40] My research assistants compiled this list by searching on Westlaw for fee decisions in cases with settlement funds of this size that contained information about counsel's lodestar. Thus, they used search terms like "megafund" or "hundred million" to capture fund size and search terms like "lodestar" or "hours" to capture decisions that contained rate information. If the case had a fund of the right size, but the reported decision did not contain enough information about the fee petition, they tracked that down on PACER. No cases of the relevant size enabling reference to counsel's lodestar information were rejected.

GRAPH 7
COUNSEL'S BLENDED BILLING RATES COMPARED TO BLENDED BILLING RATES IN $100-$500 MILLION CLASS ACTION SETTLEMENTS



As is visually evident, the blended billing rate in this case ($484.70) is in the middle of the pack – right at the median in the graph – and but three cents above the mean, demonstrating its normalcy.

32. The reasonableness of Counsel's blended billing rate supports several further conclusions. The blended billing rate reflects the distribution of time between partners, associates, and paralegals. If only partners did this work, the blended billing rate would be very high, whereas if only paralegals billed, the blended billing rate would be very low. The fact that the blended billing rate in this case is at or below average across two comparison sets means that Lead Counsel distributed work among partners, associates, non-partnership track attorneys, and paralegals in an appropriate fashion. Given the slightly above-average rates of the most senior attorneys in this case noted above, it is a sign of good leadership that Lead Counsel was able to bring the blended rate in at this mean.

33. In sum, three separate empirical analyses (one with two sub-parts) support the conclusion that Counsel's rates are entirely normal: they are consistent with the mean for rates approved by courts in awarding fees in class actions in this community; they are below the rates charged by the defendant's firm to its paying clients for similar work; and the blended rate is consistent with rates in this community and for comparably-sized settlements.

IV.
COUNSEL APPROPRIATELY BILLED NON-PARTNER TRACK ATTORNEYS AT MARKET RATES AND THE RATES EMPLOYED WERE REASONABLE

34. Counsel employed non-partnership track attorneys to undertake some aspects of the class's legal work, particularly the review of documents. I have reviewed the rates at which these non-partnership track attorneys are included in the lodestar for cross-check purposes and make three factual observations about those rates, two empirical, one policy-oriented.

35. *First,* these are skilled attorneys. They are referred to as "contract" or "staff" attorneys solely by virtue of the fact that they are not on a partnership track at the relevant law firms, but are hired on more of an ad hoc basis.[41] The fact that these lawyers are not on a partnership track, standing alone, says nothing about their qualifications or about the type of work that they undertook. For purposes of this report, I reviewed Lieff Cabraser's slide presentation to the Special Master, which, as the Court knows, reflects the backgrounds and experiences of many of the non-partnership track attorneys who worked on this case. It appeared clear to me that these attorneys were very well qualified: they typically graduated from good law schools; have significant experience, including at the tasks to which they are assigned; and often

[41] While different firms call these attorneys different names – e.g., "contract attorneys" or "staff attorneys" – the defining characteristic of them is that they are not on a partnership track. Commentators often make the incorrect assumption that these attorneys are necessarily "temps." Many are salaried employees of the firms and work at these firms over many years.

work on a non-partnership track as a personal choice about how they wish their careers to proceed, not because they are unqualified for partnership track jobs. Moreover, the firms have convincingly attested that these attorneys did meaningful work.

36. *Second*, the rates at which counsel included non-partnership track attorneys in their lodestar for cross-check purposes are consistent with 57 rates that courts have explicitly or implicitly affirmed in approving fee petitions in 12 class action cases decided since 2013.[42] A list of those cases is attached as Exhibit F. The rates in those cases ranged from $250.00 to $550.00, with a mean (in 2016 dollars) of $379.53.[43] The blended rate for non-partnership attorneys in this case was $379.31. Thus the rate in this case is 22 cents, or 0.06%, below the mean of the comparison group.[44] Put simply, the billing rate for non-partnership track attorneys in this case is entirely normal.

[42] My research assistants compiled this list by searching for recent fee decisions involving staff or contract attorney rates, using a neutral search string in Westlaw. The search returned 29 cases. I read through all 29 cases. We then used the rates from any case with court-approved billing rates for contract or staff attorneys, accounting for experience, except for one case in which the contract attorneys simply staffed a calling center. This yielded 12 usable cases with 57 data points.

[43] Using a different data set, I recently reported a very similar numerical result in the Volkswagen "Clean Diesel" MDL. There, a set of 13 cases with 138 data points yielded an average contract attorney rate of $386.75 in 2017 dollars. *See* Declaration of William B. Rubenstein in Support of Plaintiffs' Motion for 3.0-Liter Attorneys' Fees and Costs at 21, *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case 3:15-md-02672-CRB (N.D. Cal.) (ECF No. 3396-2, Ex. B, filed June 30, 2017). Here, my 12 case data set's norm of $379.53 in 2016 dollars is the equivalent of $389.02 in 2017 dollars, which is virtually equivalent to the $386.75 I reported in VW (0.59% higher). Hence the two data sets reinforce one another.

[44] I removed Michael Bradley from this portion of my rate study since his hourly rate was set on a contingent basis, unlike the other non-partnership track attorneys. If he is included, the total for this case rises from $379.31 to $382.94, which is 0.90% above the mean of the comparison group.

37. *Third,*[45] the policy question of how to bill non-partnership track attorneys has arisen regularly in class suits as class counsel will often hire such lawyers to perform discrete functions in a particular case. Class counsel typically pay these attorneys at a lower hourly rate than the hourly rate they assign to them in the lodestar analysis in their fee petitions. To put numbers on this idea: the firms herein hired non-partnership track attorneys at rates ranging from $30 to $60/hour, then assigned these attorneys rates ranging from $335 to $440/hour[46] for purposes of the lodestar cross-check calculation based, for example, on the attorneys' number of years out of law school, their experience, and the type of work they performed. It is my expert opinion that several policy arguments support this approach:

- This is precisely the way in which firms bill legal services – including those of partners, associates, paralegals, and contract attorneys – to clients in the private market. For instance, a firm may pay a first-year associate a $150,000 annual salary and expect 2,000 hours of billable time in return. That means that the associate's salary breaks down to $75/hour. The associate likely costs the firm more than $75/hour because the firm has spent time recruiting and training the associate and because it pays for overhead, perhaps benefits, and other expenses associated with her work. Consequently, the associate who is receiving a $75/hour salary may actually cost the firm, say, $100/hour. But the firm then bills its clients, maybe, $375/hour for that associate's time, realizing a $275/hour, or 275%, profit for the associate's work. Regardless of the precise numbers that attach to the practice, the point is that law firms are in the business of making their partners a profit by having the partners bill the work done by their associates and paralegals to their clients at higher rates than they pay them. So long as a contract attorney is providing legal services to a client, a firm is entitled to bill her time to the client in the same manner.

- The ABA reached this conclusion nearly two decades ago, *see* ABA Formal Opinion 00-420, and I note as a matter of policy that courts have often cited to the ABA's guidance in concluding that class action firms "may charge a markup to cover overhead *and profit* if the contract attorney charges are billed as fees for legal services.[47] It makes sense that courts have so held because a contingent fee class action firm's lodestar operates in the same way as a private law firm's bill to its

[45] The language and citations in this and the following paragraphs are taken from 5 *Newberg on Class Actions*, supra note 4, at § 15:41.

[46] These ranges do not encompass Michael Bradley, as noted above. *See* note 44, *supra.*

[47] *In re AOL Time Warner S'holder Derivative Litig.,* No. 02 Civ. 6302(CM), 2010 WL 363113, at *26 (S.D.N.Y. Feb. 1, 2010) (emphasis added).

client: it embodies this basic profit for its partners and, in doing so, brings the lodestar in line with market rates.[48]

- Permitting class counsel to bill non-partnership track attorneys at market rates is cost-efficient: it encourages the firms to delegate work to attorneys who are likely billed at lower costs than are associates or partners. If class action firms could only bill non-partnership track attorneys at cost, they would likely transfer the work required to associates.

38. In sum, quantitative analysis of the rates paid non-partnership track attorneys shows that these rates are indistinguishable from the rates regularly approved by courts for such work and public policy strongly supports the manner in which Counsel billed non-partnership track attorneys.

V.
COUNSEL'S FEE WAS REASONABLE

39. Under the lodestar cross-check method, the measuring stick of the reasonableness of counsel's fee is the level of multiplier that it represents over the time they invested in the case. Counsel's fee embodied a lodestar multiplier of 2.01, or approximately 2.[49] Quantitatively, a 2

[48] The lodestar *multiplier* is meant to reward the class action firm over and above the market rate for undertaking a case on a contingency fee basis. Without such a multiplier, no firm would undertake contingent cases, as it would be far safer to simply reap the normal profit embodied in the lodestar but reflected, in a non-contingent case, in the bill to the client. *See, e.g.*, *Ketchum v. Moses* 17 P.3d 735, 742 (Cal. 2001) ("A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans. . . . A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases." (internal quotation marks and citations omitted)).

[49] This is the multiplier for the full fee award to all counsel in the case divided by the hours of all counsel in the case. As noted above, *see supra* ¶ 26, if all hourly rates are adjusted to Boston rates, the multiplier rises to 2.07.

multiplier is consistent with multipliers that courts have previously approved in similar circumstances.

40. Three leading empirical studies of class action attorney's fees found the mean multipliers in all cases to be 1.42,[50] 1.65, [51] and 1.81,[52] while an older study found the mean multiplier to be 4.97.[53]

41. These studies also show that multipliers are higher in cases with larger returns, with the mean multipliers rising to 2.39 (in cases with recoveries over $44.6 million) in one study;[54] to 3.18 (in cases with recoveries over $175.5 million) in another study;[55] and to 4.5 (in cases with recoveries over $100 million) in a third study.[56]

42. In the set of 20 $100-$500 million settlements my research assistants assembled for purposes of this Declaration, the approved multipliers ranged from 0.92 to 8.3, with the average being 2.28. The 2.01 multiplier in this case is therefore 12% below the mean for

[50] 5 *Newberg on Class Actions, supra* note 4, at § 15:89 (reporting on data from William B. Rubenstein and Rajat Krishna, *Class Action Fee Awards: A Comprehensive Empirical Study* (draft on file with author)).

[51] Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 833-34 (2010).

[52] Eisenberg & Miller II, *supra* note 5, at 272.

[53] Stuart J. Logan, Beverly C. Moore & Jack Moshman, *Attorney Fee Awards in Common Fund Class Actions*, 24 Class Action Rep. 167, 169 (2003) (hereafter "Logan").

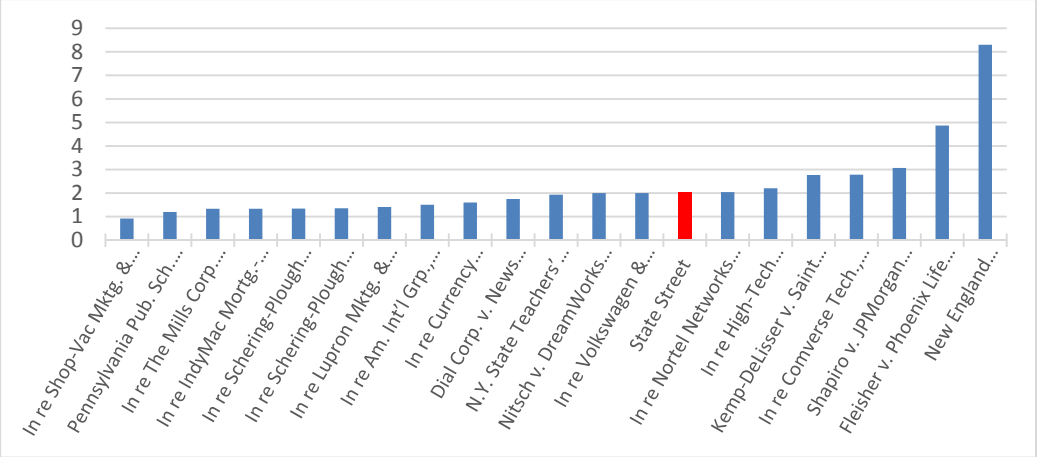
[54] 5 *Newberg on Class Actions, supra* note 4, at § 15:89 (reporting on data from William B. Rubenstein and Rajat Krishna, *Class Action Fee Awards: A Comprehensive Empirical Study* (draft on file with author)).

[55] Eisenberg & Miller II, *supra* note 5, at 274.

[56] Logan, *supra* note 53, at 167.

settlements of comparable size;[57] it appears a few cases higher than the median in Graph 8, below, but the only cases between this case and the median case have multiplier values of 2.0 rather than 2.01.

GRAPH 8
COURT-APPROVED MULTIPLIERS IN
$100-$500 MILLION-DOLLAR CASES



43. Beyond these bare statistics, case reports demonstrate that, in appropriate circumstances, courts have often approved percentage awards embodying lodestar multipliers far above the multiplier of 2 at issue here. In the leading Ninth Circuit opinion on point, for example, the Court established 25% as the benchmark percentage fee and approved a multiplier of 3.65, writing that this number "was within the range of multipliers applied in common fund cases"[58] and appending a list of such cases to its decision. Similarly, in Exhibit G, I provide a

[57] If Counsel's rates are adjusted to the Boston market and a 2.07 multiplier is employed, *see* ¶ 26, *supra,* that multiplier is 9.3% below the mean of the comparison set.

[58] *Vizcaino*, 290 F.3d at 1051; *see also Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) ("A 2.83 multiplier falls within the Ninth Circuit's presumptively acceptable range of 1.0–4.0. Given the complexity and duration of this litigation, the results obtained for the class, and the risk counsel faced in bringing the litigation, the Court finds the 2.83 multiplier appropriate." (citation omitted)).

list of 54 cases with multipliers over 3.5, 48 of which have multipliers of 4.00 or higher, and 31 of which have multipliers of 5.00 or higher. This list is not meant to be either exhaustive or representative of all multipliers. Rather, it demonstrates that courts approve percentage awards that embody multipliers well above the multiplier sought here in appropriate circumstances.

44. That such circumstances exist in this case is evident from this Court's conclusions at the fairness hearing:

> The amount awarded is about 1.8 times the lodestar. The lodestar is about $41 million. This is reasonable. In this case the plaintiffs' lawyers took on a contingent basis a novel, risky case. The result at the outset was uncertain, and it remained, until there was a settlement, uncertain. The plaintiffs' counsel were required to develop a novel case. This is not a situation where they piggybacked on the work of a public agency that had made certain findings. They were required to be pioneers to a certain extent. They were required to engage in substantial discovery that included production of nine million documents. They engaged in arduous arm's length negotiation that included 19 mediation sessions. They had to stand up on behalf of the class to experienced, able, energetic, formidable adversaries. They did that. And as I said, they generated a fair and reasonable return for the class, $300 million.[59]

The Court's finding regarding the risks that Counsel took and the results that they achieved are precisely the factors that support a multiplied fee award.[60] Nothing about the unfortunate miscalculation in Counsel's time-keeping displaces this conclusion, as the change in the proposed multiplier is simply from 1.8 to 2.

45. In sum, the requested multiplier is therefore above the mean for *all* cases but below the mean for *large* cases, it falls securely within the range of multipliers that courts have approved in appropriate circumstances in the past, and such circumstances existed in this case. As the purpose of the lodestar cross-check is to generate a multiplier enabling an assessment of

[59] Hearing Transcript, Nov. 2, 2016 (ECF No. 114) at 36.

[60] 5 *Newberg on Class Actions, supra* note 4, at § 15:87.

the reasonableness of the percentage award, a multiplier at this level fully supports the reasonableness of the fee the Court awarded Counsel in this matter.

* * *

46. I have testified that:

- Counsel's ***approach*** to its fee – presenting the Court with a requested percentage, providing information to enable a lodestar cross-check, and addressing a series of relevant factors – is the most common fee method and one normally used in large common fund cases like this one.

- Counsel's hourly ***billing rates*** are consistent with rates in class action cases in this community; lower than the rates charged by corporate firms in this market for similar work; and within pennies of the average blended hourly billing rates approved in other class action settlements in this community and in comparably-sized settlements.

- Counsel's approach to ***billing non-partnership track attorneys*** is consistent with prevailing law, policy, and ethical norms and the rates at which they bill these attorneys are fully consistent with the rates at which courts have approved contract and staff attorney work in other class action settlements.

- Counsel's ***multiplier*** of approximately 2 is below the mean for settlements of $100-$500 million and entirely reasonable given the unique risks that it shouldered and the superb results that it achieved for the class.

Executed this 31st day of July, 2017, in Los Angeles, California.

William B. Rubenstein

EXHIBIT A

PROFESSOR WILLIAM B. RUBENSTEIN

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Cambridge, MA 02138

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rubenstein@law.harvard.edu

ACADEMIC EMPLOYMENT

HARVARD LAW SCHOOL, CAMBRIDGE MA

Sidley Austin Professor of Law — 2011-present
Professor of Law — 2007-2011
Bruce Bromley Visiting Professor of Law — 2006-2007
Visiting Professor of Law — 2003-2004, 2005-2006
Lecturer in Law — 1990-1996

Courses: Civil Procedure; Class Action Law; Remedies
Awards: 2012 Albert M. Sacks-Paul A. Freund Award for Teaching Excellence
Membership: American Law Institute; American Bar Foundation Fellow

UCLA SCHOOL OF LAW, LOS ANGELES CA

Professor of Law — 2002-2007
Acting Professor of Law — 1997-2002

Courses: Civil Procedure; Complex Litigation; Remedies
Awards: 2002 Rutter Award for Excellence in Teaching
Top 20 California Lawyers Under 40, *Calif. Law Business* (2000)

STANFORD LAW SCHOOL, STANFORD CA

Acting Associate Professor of Law — 1995-1997

Courses: Civil Procedure; Federal Litigation
Awards: 1997 John Bingham Hurlbut Award for Excellence in Teaching

YALE LAW SCHOOL, NEW HAVEN CT

Lecturer in Law — 1994, 1995

BENJAMIN N. CARDOZO SCHOOL OF LAW, NEW YORK NY

Visiting Professor — Summer 2005

LITIGATION-RELATED EMPLOYMENT

AMERICAN CIVIL LIBERTIES UNION, NATIONAL OFFICE, NEW YORK NY

Project Director and Staff Counsel — 1987-1995

Litigated impact cases in federal and state courts throughout the US. Supervised a staff of attorneys at the national office, oversaw work of ACLU attorneys around the country, and coordinated work with private cooperating counsel nationwide. Significant experience in complex litigation practice and procedural issues; appellate litigation; litigation coordination, planning and oversight.

HON. STANLEY SPORKIN, U.S. DISTRICT COURT, WASHINGTON DC

Law Clerk — 1986-87

PUBLIC CITIZEN LITIGATION GROUP, WASHINGTON DC

Intern — Summer 1985

EDUCATION

HARVARD LAW SCHOOL, CAMBRIDGE MA
J.D., 1986, *magna cum laude*

YALE COLLEGE, NEW HAVEN CT
B.A., 1982, *magna cum laude*
Editor-in-Chief, YALE DAILY NEWS

SELECTED COMPLEX LITIGATION EXPERIENCE

Professional Service and Highlighted Activities

♢ *Author,* NEWBERG ON CLASS ACTIONS (sole author of Fourth Edition updates since 2008 and sole author of all content in the Fifth Edition)

♢ *Speaker,* Judicial Panel on Multidistrict Litigation, Multidistrict Litigation (MDL) Transferee Judges Conference, Palm Beach, Florida (invited to present to MDL judges on recent developments in class action law and related topics (2010, 2011, 2012, 2013, 2014 (invited), 2015, 2016, 2017)

♢ *Special counsel,* Appointed by the United States Court of Appeals for the Second Circuit to argue for affirmance of district court fee decision in complex securities class action, with result that the Court summarily affirmed the decision below (*In re Indymac Mortgage-Backed Securities Litigation*, 94 F.Supp.3d 517 (S.D.N.Y. 2015), *aff'd sub. nom*., *Berman DeValerio v. Olinsky*, No. 15-1310-cv, 2016 WL 7323980 (2d Cir. Dec. 16, 2017))

♢ *Author, Amicus* brief filed in the United States Supreme Court on behalf of civil procedure and complex litigation law professors concerning the importance of the class action lawsuit (*AT&T Mobility v. Concepcion,* No. 09-893, 131 S. Ct. 1740 (2011))

♢ *Amicus curiae, Amicus* brief filed in – and approvingly cited by – California Supreme Court on proper approach to attorney's fees in common fund cases (*Laffitte v. Robert Half Int'l Inc*., 376 P.3d 672, 687 (Cal. 2016))

♢ *Adviser,* American Law Institute, *Project on the Principles of the Law of Aggregate Litigation*, Philadelphia, Pennsylvania

♢ *Advisory Board, Class Action Law Monitor* (Strafford Publications), 2008-

♢ *Co-Chair,* ABA Litigation Section, Mass Torts Committee, Class Action Sub-Committee, 2007

♢ *Planning Committee,* American Bar Association, Annual National Institute on Class Actions Conference, 2006, 2007

♢ "*Expert's Corner*" (Monthly Column)*, Class Action Attorney Fee Digest,* 2007-2011

Expert Witness

♢ Retained as an expert witness and submitted report explaining meaning of the denial of a motion to dismiss in American procedure to foreign tribunals (*In re Qualcomm Antitrust Matter,* declaration submitted to tribunals in Korea and Taiwan (2017))

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in 3.0-liter settlement, referenced by court in awarding fees (*In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation,* 2017 WL 3175924 (N.D. Cal. July 21, 2017))

♢ Retained as an expert witness concerning impracticability of joinder in antitrust class action (*In re Celebrex (Celecoxib) Antitrust Litigation,* Civ. Action No. 2-14-cv-00361 (E.D. Va. (2017))

♢ Submitted an expert witness declaration and deposed concerning impracticability of joinder in antitrust class action (*In re Modafinil Antitrust Litigation,* Civ. Action No. 2-06-cv-01797 (E.D. Pa. (2017))

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in 2.0-liter settlement (*In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation,* 2017 WL 1047834 (N.D. Cal., March 17, 2017))

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request, referenced by court in awarding fees (*Aranda v. Caribbean Cruise Line, Inc.,* 2017 WL 1368741 (N.D. Ill., April 10, 2017))

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*McKinney v. United States Postal Service*, Civil Action No. 1:11-cv-00631 (D.D.C. (2016))

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Johnson v. Caremark RX, LLC,* Case No. 01-CV-2003-6630, Alabama Circuit Court, Jefferson County (2016))

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in sealed fee mediation (2016)

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Geancopoulos v. Philip Morris USA Inc.,* Civil Action No. 98-6002-BLS1 (Mass. Superior Court, Suffolk County))

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in sealed fee mediation (2016)

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Gates v. United Healthcare Insurance Company,* Case No. 11 Civ. 3487 (S.D.N.Y. 2015))

♢ Retained as an expert trial witness on class action procedures and deposed prior to trial in matter

that settled before trial (*Johnson v. Caremark RX, LLC,* Case No. 01-CV-2003-6630, Alabama Circuit Court, Jefferson County (2016))

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request, referenced by court in awarding fees (*In re High-Tech Employee Antitrust Litig*., 2015 WL 5158730 (N.D. Cal. Sept. 2, 2015))

♢ Retained as an expert witness concerning adequacy of putative class representatives in securities class action (*Medoff v. CVS Caremark Corp.,* Case No. 1:09-cv-00554 (D.R.I. (2015))

♢ Submitted an expert witness declaration concerning reasonableness of proposed class action settlement, settlement class certification, attorney's fees, and incentive awards (*Fitzgerald Farms, LLC v. Chespeake Operating, L.L.C.,* Case No. CJ-2010-38, Dist. Ct., Beaver County, Oklahoma (2015))

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request, referenced by court in awarding fees (*Asghari v. Volkswagen Grp. of Am., Inc*., 2015 WL 12732462 (C.D. Cal. May 29, 2015))

♢ Submitted an expert witness declaration concerning propriety of severing individual cases from class action and resulting statute of repose ramifications (*In re: American International Group, Inc. 2008 Securities Litigation,* 08-CV-4772-LTS-DCF (S.D.N.Y. (2015))

♢ Retained by Fortune Global 100 Corporation as an expert witness on fee matter that settled before testimony (2015)

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*In re: Hyundai and Kia Fuel Economy Litigation,* MDL 13-02424 (C.D. Cal. (2014))

♢ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Ammari Electronics v. Pacific Bell Directory*, Case No. RG0522096, California Superior Court, Alameda County (2014))

♢ Submitted an expert witness declaration and deposed concerning plaintiff class action practices under the Private Securities Litigation Reform Act of 1995 (PSLRA), as related to statute of limitations question (*Federal Home Loan Bank of San Francisco v. Deutsche Bank Securities, Inc.,* Case No. CGC-10-497839, California Superior Court, San Francisco County (2014))

♢ Submitted an expert witness declaration and deposed concerning plaintiff class action practices under the Private Securities Litigation Reform Act of 1995 (PSLRA), as related to statute of limitations question (*Federal Home Loan Bank of San Francisco v. Credit Suisse Securities (USA) LLC,* Case No. CGC-10-497840, California Superior Court, San Francisco County (2014))

♢ Retained as expert witness on proper level of common benefit fee in MDL (*In re Neurontin Marketing and Sales Practice Litigation,* Civil Action No. 04-10981, MDL 1629 (D. Mass. (2014))

♢ Submitted an expert witness declaration concerning Rule 23(g) selection of competing counsel,

referenced by court in deciding issue (*White v. Experian Information Solutions, Inc.,* 993 F. Supp. 2d 1154 (C.D. Cal. (2014))

♢ Submitted an expert witness declaration concerning proper approach to attorney's fees under California law in a statutory fee-shifting case (*Perrin v. Nabors Well Services Co.,* Case No. 1220037974, Judicial Arbitration and Mediation Services (JAMS) (2013))

♢ Submitted an expert witness declaration concerning fairness and adequacy of proposed nationwide class action settlement (*Verdejo v. Vanguard Piping Systems,* Case No. BC448383, California Superior Court, Los Angeles County (2013))

♢ Retained as an expert witness regarding fairness, adequacy, and reasonableness of proposed nationwide consumer class action settlement (*Herke v. Merck,* No. 2:09-cv-07218, MDL Docket No. 1657 (*In re Vioxx Products Liability Litigation*) (E. D. La. (2013))

♢ Retained as an expert witness concerning ascertainability requirement for class certification and related issues (*Henderson v. Acxiom Risk Mitigation, Inc.,* Case No. 3:12-cv-00589-REP (E.D. Va. (2013))

♢ Submitted an expert witness declaration concerning reasonableness of class action settlement and performing analysis of "net expected value" of settlement benefits, relied on by court in approving settlement (*In re Navistar Diesel Engine Products Liab. Litig.*, 2013 WL 10545508 (N.D. Ill. July 3, 2013))

♢ Submitted an expert witness declaration concerning reasonableness of class action settlement and attorney's fee request (*Commonwealth Care All. v. Astrazeneca Pharm. L.P.*, 2013 WL 6268236 (Mass. Super. Aug. 5, 2013))

♢ Submitted an expert witness declaration concerning propriety of preliminary settlement approval in nationwide consumer class action settlement (*Anaya v. Quicktrim, LLC,* Case No. CIVVS 120177, California Superior Court, San Bernardino County (2012))

♢ Submitted expert witness affidavit concerning fee issues in common fund class action (*Tuttle v. New Hampshire Med. Malpractice Joint Underwriting Assoc.,* Case No. 217-2010-CV-00294, New Hampshire Superior Court, Merrimack County (2012))

♢ Submitted expert witness declaration and deposed concerning class certification issues in nationwide fraud class action, relied upon by the court in affirming class certification order (*CVS Caremark Corp. v. Lauriello,* 175 So. 3d 596, 609-10 (Ala. 2014))

♢ Submitted expert witness declaration in securities class action concerning value of proxy disclosures achieved through settlement and appropriate level for fee award (*Rational Strategies Fund v. Jhung,* Case No. BC 460783, California Superior Court, Los Angeles County (2012))

♢ Submitted an expert witness report and deposed concerning legal malpractice in the defense of a class action lawsuit (*KB Home v. K&L Gates, LLP,* Case No. BC484090, California Superior Court, Los Angeles County (2011))

◊ Retained as expert witness on choice of law issues implicated by proposed nationwide class certification (*Simon v. Metropolitan Property and Cas. Co.,* Case No. CIV-2008-1008-W (W.D. Ok. (2011))

◊ Retained, deposed, and testified in court as expert witness in fee-related dispute (*Blue, et al. v. Hill*,Case No. 3:10-CV-02269-O-BK (N.D. Tex. (2011))

◊ Retained as an expert witness in fee-related dispute (*Furth v. Furth*, Case No. C11-00071-DMR (N.D. Cal. (2011))

◊ Submitted expert witness declaration concerning interim fee application in complex environmental class action (*DeLeo v. Bouchard Transportation,* Civil Action No. PLCV2004-01166-B, Massachusetts Superior Court (2010))

◊ Retained as an expert witness on common benefit fee issues in MDL proceeding in federal court (*In re Vioxx Products Liability Litigation*, MDL Docket No. 1657 (E.D. La. (2010))

◊ Submitted expert witness declaration concerning fee application in securities case, referenced by court in awarding fee (*In re AMICAS, Inc. Shareholder Litigation,* 27 Mass. L. Rptr. 568 (Mass. Sup. Ct. (2010))

◊ Submitted an expert witness declaration concerning fee entitlement and enhancement in non-common fund class action settlement, relied upon by the court in awarding fees (*Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172-74 (C.D. Cal. 2010))

◊ Submitted an expert witness declaration concerning class action fee allocation among attorneys (*Salvas v. Wal-Mart*, Civil Action No. 01-03645, Massachusetts Superior Court (2010))

◊ Submitted an expert witness declaration concerning settlement approval and fee application in wage and hour class action settlement (*Salvas v. Wal-Mart*, Civil Action No. 01-03645, Massachusetts Superior Court (2010))

◊ Submitted an expert witness declaration concerning objectors' entitlement to attorney's fees (*Rodriguez v. West Publishing Corp.,* Case No. CV-05-3222 (C.D. Cal. (2010))

◊ Submitted an expert witness declaration concerning fairness of settlement provisions and processes, relied upon by the Ninth Circuit in reversing district court's approval of class action settlement (*Radcliffe v. Experian Inform. Solutions Inc.*, 715 F.3d 1157, 1166 (9th Cir. 2013))

◊ Submitted an expert witness declaration concerning attorney's fees in class action fee dispute, relied upon by the court in deciding fee issue (*Ellis v. Toshiba America Information Systems, Inc.*, 218 Cal. App. 4th 853, 871, 160 Cal. Rptr. 3d 557, 573 (2d Dist. 2013))

◊ Submitted an expert witness declaration concerning common benefit fee in MDL proceeding in federal court (*In re Genetically Modified Rice Litigation*, MDL Docket No. 1811 (E.D. Mo. (2009))

♢ Submitted an expert witness declaration concerning settlement approval and fee application in national MDL class action proceeding (*In re Wal-Mart Wage and Hour Employment Practices Litigation*, MDL Docket No.1735 (D. Nev. (2009))

♢ Submitted an expert witness declaration concerning fee application in national MDL class action proceeding, referenced by court in awarding fees (*In re Dept. of Veterans Affairs (VA) Data Theft Litigation*, 653 F. Supp.2d 58 (D.D.C. (2009))

♢ Submitted an expert witness declaration concerning common benefit fee in mass tort MDL proceeding in federal court (*In re Kugel Mesh Products Liability Litigation*, MDL Docket No. 1842 (D. R.I. (2009))

♢ Submitted an expert witness declaration and supplemental declaration concerning common benefit fee in consolidated mass tort proceedings in state court (*In re All Kugel Mesh Individual Cases*, Master Docket No. PC-2008-9999, Superior Court, State of Rhode Island (2009))

♢ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Warner v. Experian Information Solutions, Inc.*, Case No. BC362599, California Superior Court, Los Angeles County (2009))

♢ Submitted an expert witness declaration concerning process for selecting lead counsel in complex MDL antitrust class action (*In re Rail Freight Fuel Surcharge Antitrust Litigation*, MDL Docket No. 1869 (D. D.C. (2008))

♢ Retained, deposed, and testified in court as expert witness on procedural issues in complex class action (*Hoffman v. American Express*, Case No. 2001-022881, California Superior Court, Alameda County (2008))

♢ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Salsgiver v. Yahoo! Inc.*, Case No. BC367430, California Superior Court, Los Angeles County (2008))

♢ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Voight v. Cisco Systems, Inc.*, Case No. 106CV075705, California Superior Court, Santa Clara County (2008))

♢ Retained and deposed as expert witness on fee issues in attorney fee dispute (*Stock v. Hafif,* Case No. KC034700, California Superior Court, Los Angeles County (2008))

♢ Submitted an expert witness declaration concerning fee application in consumer class action (*Nicholas v. Progressive Direct*, Civil Action No. 06-141-DLB (E.D. Ky. (2008))

♢ Submitted expert witness declaration concerning procedural aspects of national class action arbitration (*Johnson v. Gruma Corp.,* JAMS Arbitration No. 1220026252 (2007))

♢ Submitted expert witness declaration concerning fee application in securities case (*Drulias v. ADE Corp.,* Civil Action No. 06-11033 PBS (D. Mass. (2007))

♢ Submitted expert witness declaration concerning use of expert witness on complex litigation matters in criminal trial (*U.S. v. Gallion, et al*., No. 07-39 (E. D. Ky. (2007))

♢ Retained as expert witness on fees matters (*Heger v. Attorneys' Title Guaranty Fund, Inc.,* No. 03-L-398, Illinois Circuit Court, Lake County, IL (2007))

♢ Retained as expert witness on certification in statewide insurance class action (*Wagner v. Travelers Property Casualty of America*, No. 06CV338, Colorado District Court, Boulder County, CO (2007))

♢ Testified as expert witness concerning fee application in common fund shareholder derivative case (*In Re Tenet Health Care Corporate Derivative Litigation*, Case No. 01098905, California Superior Court, Santa Barbara Cty, CA (2006))

♢ Submitted expert witness declaration concerning fee application in common fund shareholder derivative case (*In Re Tenet Health Care Corp. Corporate Derivative Litigation*, Case No. CV-03-11 RSWL (C.D. Cal. (2006))

♢ Retained as expert witness as to certification of class action (*Canova v. Imperial Irrigation District*, Case No. L-01273, California Superior Court, Imperial Cty, CA (2005))

♢ Retained as expert witness as to certification of nationwide class action (*Enriquez v. Edward D. Jones & Co.,* Missouri Circuit Court, St. Louis, MO (2005))

♢ Submitted expert witness declaration on procedural aspects of international contract litigation filed in court in Korea (*Estate of Wakefield v. Bishop Han & Jooan Methodist Church* (2002))

♢ Submitted expert witness declaration as to contested factual matters in case involving access to a public forum (*Cimarron Alliance Foundation v. The City of Oklahoma City,* Case No. Civ. 2001-1827-C (W.D. Ok. (2002))

♢ Submitted expert witness declaration concerning reasonableness of class certification, settlement, and fees (*Baird v. Thomson Elec. Co.*, Case No. 00-L-000761, Cir. Ct., Mad. Cty, IL (2001))

Expert Consultant

♢ Provided expert consulting services to the ACLU on multi-district litigation issues arising out of various challenges to President Trump's travel ban and related policies (*In re American Civil Liberties Union Freedom of Information Act Requests Regarding Executive Order 13769*, Case Pending No. 28, Judicial Panel on Multidistrict Litigation (2017); *Darweesh v. Trump*, Case No. 1:17-cv-00480-CBA-LB (E.D.N.Y. (2017))

♢ Provided expert consulting services to law firm regarding billing practices and fee allocation issues in nationwide class action (2016)

- ◊ Provided expert consulting services to law firm regarding fee allocation issues in nationwide class action (2016)

- ◊ Provided expert consulting services to the ACLU of Southern California on class action and procedural issues arising out of challenges to municipality's treatment of homeless persons with disabilities (*Glover v. City of Laguna Beach*, Case No. 8:15-cv-01332-AG-DFM (C.D. Cal. (2016))

- ◊ Retained as an expert consultant on class certification issues (*In re: Facebook, Inc., IPO Securities and Derivative Litigation*, No. 1:12-md-2389 (S.D.N.Y. 2015))

- ◊ Provided expert consulting services to lead class counsel on class certification issues in nationwide class action (2015)

- ◊ Retained by a Fortune 100 Company as an expert consultant on class certification issues

- ◊ Retained as an expert consultant on class action and procedure related issues (*Lange et al v. WPX Energy Rocky Mountain LLC*, Case No. #: 2:13-cv-00074-ABJ (D. Wy. (2013))

- ◊ Retained as an expert consultant on class action and procedure related issues (*Flo & Eddie, Inc., v. Sirius XM Radio, Inc.*, Case No. CV 13-5693 (C.D. Cal. (2013))

- ◊ Served as an expert consultant on substantive and procedural issues in challenge to legality of credit card late and over-time fees (*In Re Late Fee and Over-Limit Fee Litigation*, 528 F.Supp.2d 953 (N.D. Cal. 2007), *aff'd*, 741 F.3d 1022 (9th Cir. 2014))

- ◊ Retained as an expert on Class Action Fairness Act (CAFA) removal issues and successfully briefed and argued remand motion based on local controversy exception (*Trevino, et al. v. Cummins, et al.*,No. 2:13-cv-00192-JAK-MRW (C. D. Cal. (2013))

- ◊ Retained as an expert consultant on class action related issues by consortium of business groups (*In re Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico on April 20, 2010*, MDL No. 2179 (E.D. La. (2012))

- ◊ Provided presentation on class certification issues in nationwide medical monitoring classes (*In re: National Football League Players' Concussion Injury Litigation,* MDL No. 2323, Case No. 2:12-md-02323-AB (E.D. Pa. (2012))

- ◊ Retained as an expert consultant on class action related issues in mutli-state MDL consumer class action (*In re Sony Corp. SXRD Rear Projection Television Marketing, Sales Practices & Prod. Liability Litig.*, MDL No. 2102 (S.D. N.Y. (2009))

- ◊ Retained as an expert consultant on class action certification, manageability, and related issues in mutli-state MDL consumer class action (*In re Teflon Prod. Liability Litig.*, MDL No. 1733 (S.D. Iowa (2008))

- ◊ Retained as an expert consultant/co-counsel on certification, manageability, and related issues in nationwide anti-trust class action (*Brantley v. NBC Universal*, No.- CV07-06101 (C.D. Cal.

(2008))

♢ Retained as an expert consultant on class action issues in complex multi-jurisdictional construction dispute (*Antenucci, et al., v. Washington Assoc. Residential Partner, LLP, et al.,* Civil No. 8-04194 (E.D. Pa. (2008))

♢ Retained as an expert consultant on complex litigation issues in multi-jurisdictional class action litigation (*McGreevey v. Montana Power Company*, No. 08-35137, U.S. Court of Appeals for the Ninth Circuit (2008))

♢ Retained as an expert consultant on class action and attorney fee issues in nationwide consumer class action (*Figueroa v. Sharper Image*, 517 F.Supp.2d 1292 (S.D. Fla. 2007))

♢ Retained as an expert consultant on attorney's fees issue in complex class action case (*Natural Gas Anti-Trust Cases Coordinated Proceedings*, D049206, California Court of Appeals, Fourth District (2007))

♢ Retained as an expert consultant on remedies and procedural matters in complex class action (*Sunscreen Cases*, JCCP No. 4352, California Superior Court, Los Angeles County (2006))

♢ Retained as an expert consultant on complex preclusion questions in petition for review to California Supreme Court (*Mooney v. Caspari,* Supreme Court of California (2006))

♢ Retained as an expert consultant on attorney fee issues in complex common fund case (*In Re DietDrugs (Phen/Fen) Products Liability Litigation* (E. D. Pa. (2006))

♢ Retained as an expert consultant on procedural matters in series of complex construction lien cases (*In re Venetian Lien Litigation*, Supreme Court of the State of Nevada (2005-2006))

♢ Served as an expert consultant on class certification issues in countywide class action (*Beauchamp v. Los Angeles Cty. Metropolitan Transp. Authority*, (C.D. Cal. 2004))

♢ Served as an expert consultant on class certification issues in state-wide class action (*Williams v. State of California*, Case No. 312-236, Cal. Superior Court, San Francisco)

♢ Served as an exert consultant on procedural aspects of complex welfare litigation (*Allen v. Anderson*, 199 F.3d 1331 (9th Cir. 1999))

Ethics Opinions

♢ Retained to provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2017))

♢ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2013))

♢ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re*

Professional Responsibility Inquiries (2011))

♢ Provided expert opinion on issues of professional ethics in implicated by nationwide class action practice (*In re Professional Responsibility Inquiries* (2010))

♢ Provided expert opinion on issues of professional ethics implicated by complex litigation matter (*In re Professional Responsibility Inquiries* (2010))

♢ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2007))

Publications on Class Actions & Procedure

♢ NEWBERG ON CLASS ACTIONS (sole author of supplements to 4th edition since 2008 and of 5th edition (2011-2017))

♢ *Profit for Costs*, 63 DEPAUL L. REV. 587 (2014) (with Morris A. Ratner)

♢ *Procedure and Society: An Essay for Steve Yeazell,* 61 U.C.L.A. REV. DISC. 136 (2013)

♢ *Supreme Court Round-Up – Part II*, 5 CLASS ACTION ATTORNEY FEE DIGEST 331 (September 2011)

♢ *Supreme Court Round-Up – Part I*, 5 CLASS ACTION ATTORNEY FEE DIGEST 263 (July-August 2011)

♢ *Class Action Fee Award* Procedures, 5 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2011)

♢ *Benefits of Class Action Lawsuits*, 4 CLASS ACTION ATTORNEY FEE DIGEST 423 (November 2010)

♢ *Contingent Fees for Representing the Government: Developments in California Law*, 4 CLASS ACTION ATTORNEY FEE DIGEST 335 (September 2010)

♢ *Supreme Court Roundup*, 4 CLASS ACTION ATTORNEY FEE DIGEST 251 (July 2010)

♢ *SCOTUS Okays Performance Enhancements in Federal Fee Shifting Cases – At Least In Principle,* 4 CLASS ACTION ATTORNEY FEE DIGEST 135 (April 2010)

♢ *The Puzzling Persistence of the "Mega-Fund" Concept*, 4 CLASS ACTION ATTORNEY FEE DIGEST 39 (February 2010)

♢ *2009: Class Action Fee Awards Go Out With A Bang, Not A Whimper*, 3 CLASS ACTION ATTORNEY FEE DIGEST 483 (December 2009)

♢ *Privatizing Government Litigation: Do Campaign Contributors Have An Inside Track?*, 3 CLASS ACTION ATTORNEY FEE DIGEST 407 (October 2009)

◊ *Supreme Court Preview*, 3 CLASS ACTION ATTORNEY FEE DIGEST 307 (August 2009)

◊ *Supreme Court Roundup*, 3 CLASS ACTION ATTORNEY FEE DIGEST 259 (July 2009)

◊ *What We Now Know About How Lead Plaintiffs Select Lead Counsel (And Hence Who Gets Attorney's Fees!) in Securities Cases*, 3 CLASS ACTION ATTORNEY FEE DIGEST 219 (June 2009)

◊ *Beware Of Ex Ante Incentive Award Agreements*, 3 CLASS ACTION ATTORNEY FEE DIGEST 175 (May 2009)

◊ *On What a "Common Benefit Fee" Is, Is Not, and Should Be*, 3 CLASS ACTION ATTORNEY FEE DIGEST 87 (March 2009)

◊ *2009: Emerging Issues in Class Action Fee Awards*, 3 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2009)

◊ *2008: The Year in Class Action Fee Awards*, 2 CLASS ACTION ATTORNEY FEE DIGEST 465 (December 2008)

◊ *The Largest Fee Award – Ever!*, 2 CLASS ACTION ATTORNEY FEE DIGEST 337 (September 2008)

◊ *Why Are Fee Reductions Always 50%?: On The Imprecision of Sanctions for Imprecise Fee Submissions*, 2 CLASS ACTION ATTORNEY FEE DIGEST 295 (August 2008)

◊ *Supreme Court Round-Up,* 2 CLASS ACTION ATTORNEY FEE DIGEST 257 (July 2008)

◊ *Fee-Shifting For Wrongful Removals: A Developing Trend?,* 2 CLASS ACTION ATTORNEY FEE DIGEST 177 (May 2008)

◊ *You Cut, I Choose: (Two Recent Decisions About) Allocating Fees Among Class Counsel,* 2 CLASS ACTION ATTORNEY FEE DIGEST 137 (April 2008)

◊ *Why The Percentage Method?,* 2 CLASS ACTION ATTORNEY FEE DIGEST 93 (March 2008)

◊ *Reasonable Rates: Time To Reload The (*Laffey*) Matrix,* 2 CLASS ACTION ATTORNEY FEE DIGEST 47 (February 2008)

◊ *The "Lodestar Percentage:" A New Concept For Fee Decisions?,* 2 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2008)

◊ *Class Action Practice Today: An Overview, in* ABA SECTION OF LITIGATION, CLASS ACTIONS TODAY 4 (2008)

◊ *Shedding Light on Outcomes in Class Actions*, *in* CONFIDENTIALITY, TRANSPARENCY, AND THE U.S. CIVIL JUSTICE SYSTEM 20-59 (Joseph W. Doherty, Robert T. Reville, and Laura Zakaras eds. 2008) (with Nicholas M. Pace)

◊ *Finality in Class Action Litigation: Lessons From Habeas,* 82 N.Y.U. L. REV. 791 (2007)

◊ *The American Law Institute's New Approach to Class Action Objectors' Attorney's Fees,* 1 CLASS ACTION ATTORNEY FEE DIGEST 347 (November 2007)

◊ *The American Law Institute's New Approach to Class Action Attorney's Fees,* 1 CLASS ACTION ATTORNEY FEE DIGEST 307 (October 2007)

◊ *"The Lawyers Got More Than The Class Did!": Is It Necessarily Problematic When Attorneys Fees Exceed Class Compensation?,* 1 CLASS ACTION ATTORNEY FEE DIGEST 233 (August 2007)

◊ *Supreme Court Round-Up,* 1 CLASS ACTION ATTORNEY FEE DIGEST 201 (July 2007)

◊ *On The Difference Between Winning and Getting Fees,* 1 CLASS ACTION ATTORNEY FEE DIGEST 163 (June 2007)

◊ *Divvying Up The Pot: Who Divides Aggregate Fee Awards, How, and How Publicly?,* 1 CLASS ACTION ATTORNEY FEE DIGEST 127 (May 2007)

◊ *On Plaintiff Incentive Payments,* 1 CLASS ACTION ATTORNEY FEE DIGEST 95 (April 2007)

◊ *Percentage of What?,* 1 CLASS ACTION ATTORNEY FEE DIGEST 63 (March 2007)

◊ *Lodestar v. Percentage: The Partial Success Wrinkle,* 1 CLASS ACTION ATTORNEY FEE DIGEST 31 (February 2007)(with Alan Hirsch)

◊ *The Fairness Hearing: Adversarial and Regulatory Approaches*, 53 U.C.L.A. L. REV. 1435 (2006) (excerpted in THE LAW OF CLASS ACTIONS AND OTHER AGGREGATE LITIGATION 447-449 (Richard A. Nagareda ed., 2009))

◊ *Why Enable Litigation? A Positive Externalities Theory of the Small Claims Class Action*, 74 U.M.K.C. L. REV. 709 (2006)

◊ *On What a "Private Attorney General" Is – And Why It Matters*, 57 VAND. L. REV. 2129(2004) (excerpted in COMPLEX LITIGATION 63-72 (Kevin R. Johnson, Catherine A. Rogers & John Valery White eds., 2009)).

◊ *The Concept of Equality in Civil Procedure*, 23 CARDOZO L. REV. 1865 (2002) (selected for the Stanford/Yale Junior Faculty Forum, June 2001)

◊ *A Transactional Model of Adjudication*, 89 GEORGETOWN L.J. 371 (2000)

◊ *The Myth of Superiority*, 16 CONSTITUTIONAL COMMENTARY 599 (1999)

◊ *Divided We Litigate: Addressing Disputes Among Clients and Lawyers in Civil Rights Campaigns*, 106 YALE L. J. 1623 (1997) *(*excerpted in COMPLEX LITIGATION 120-123 (1998))

Selected Presentations

♢ *Class Action Update,* MDL Transferee Judges Conference, Palm Beach, Florida, November 1, 2017

♢ *Class Action Update,* MDL Transferee Judges Conference, Palm Beach, Florida, November 2, 2016

♢ *Judicial Power and its Limits in Multidistrict Litigation,* American Law Institute, Young Scholars Medal Conference, *The Future of Aggregate Litigation*, New York University School of Law, New York, New York, April 12, 2016

♢ *Class Action Update & Attorneys' Fees Issues Checklist,* MDL Transferee Judges Conference, Palm Beach, Florida, October 28, 2015

♢ *Class Action Law,* 2015 Ninth Circuit/Federal Judicial Center Mid-Winter Workshop, Tucson, Arizona, January 26, 2015

♢ *Recent Developments in Class Action Law,* MDL Transferee Judges Conference, Palm Beach, Florida, October 29, 2014

♢ *Recent Developments in Class Action Law,* MDL Transferee Judges Conference, Palm Beach, Florida, October 29, 2013

♢ *Class Action Remedies,* ABA 2013 National Institute on Class Actions, Boston, Massachusetts, October 23, 2013

♢ *The Public Life of the Private Law: The Logic and Experience of Mass Litigation – Conference in Honor of Richard Nagareda,* Vanderbilt Law School, Nashville, Tennessee, September 27-28, 2013

♢ *Brave New World: The Changing Face of Litigation and Law Firm Finance*, Clifford Symposium 2013, DePaul University College of Law, Chicago, Illinois, April 18-19, 2013

♢ *Twenty-First Century Litigation: Pathologies and Possibilities: A Symposium in Honor of Stephen Yeazell,* UCLA Law Review, UCLA School of Law, Los Angeles, California, January 24-25, 2013

♢ *Litigation's Mirror: The Procedural Consequences of Social Relationships,* Sidley Austin Professor of Law Chair Talk, Harvard Law School, Cambridge, Massachusetts, October 17, 2012

♢ *Alternative Litigation Funding (ALF) in the Class Action Context – Some Initial Thoughts*, Alternative Litigation Funding: A Roundtable Discussion Among Experts, George Washington University Law School, Washington, D.C., May 2, 2012

♢ *The Operation of Preclusion in Multidistrict Litigation (MDL) Cases*, Brooklyn Law School Faculty Workshop, Brooklyn, New York, April 2, 2012

◊ *The Operation of Preclusion in Multidistrict Litigation (MDL) Cases*, Loyola Law School Faculty Workshop, Los Angeles, California, February 2, 2012

◊ *Recent Developments in Class Action Law and Impact on MDL Cases,* MDL Transferee Judges Conference, Palm Beach, Florida, November 2, 2011

◊ *Recent Developments in Class Action Law,* MDL Transferee Judges Conference, Palm Beach, Florida, October 26, 2010

◊ *A General Theory of the Class Suit*, University of Houston Law Center Colloquium, Houston, Texas, February 3, 2010

◊ *Unpacking The "Rigorous Analysis" Standard,* ALI-ABA 12th Annual National Institute on Class Actions, New York, New York, November 7, 2008

◊ *The Public Role in Private Law Enforcement: Visions from CAFA*, University of California (Boalt Hall) School of Law Civil Justice Workshop, Berkeley, California, February 28, 2008

◊ *The Public Role in Private Law Enforcement: Visions from CAFA*, University of Pennsylvania Law Review Symposium, Philadelphia, Pennsylvania, Dec. 1, 2007

◊ *Current CAFA Consequences: Has Class Action Practice Changed?,* ALI-ABA 11th Annual National Institute on Class Actions, Chicago, Illinois, October 17, 2007

◊ *Using Law Professors as Expert Witnesses in Class Action Lawsuits,* ALI-ABA 10th Annual National
Institute on Class Actions, San Diego, California, October 6, 2006

◊ *Three Models for Transnational Class Actions*, Globalization of Class Action Panel, International Law Association 2006 Conference, Toronto, Canada, June 6, 2006

◊ *Why Create Litigation?: A Positive Externalities Theory of the Small Claims Class Action*, UMKC Law Review Symposium, Kansas City, Missouri, April 7, 2006

◊ *Marks, Bonds, and Labels: Three New Proposals for Private Oversight of Class Action Settlements*, UCLA Law Review Symposium, Los Angeles, California, January 26, 2006

◊ Class Action Fairness Act, Arnold & Porter, Los Angeles, California, December 6, 2005

◊ ALI-ABA 9th Annual National Institute on Class Actions, Chicago, Illinois, September 23, 2005

◊ Class Action Fairness Act, UCLA Alumni Assoc., Los Angeles, California, September 9, 2005

◊ Class Action Fairness Act, Thelen Reid & Priest, Los Angeles, California, May 12, 2005

◊ Class Action Fairness Act, Sidley Austin, Los Angeles, California, May 10, 2005

♢ Class Action Fairness Act, Munger, Tolles & Olson, Los Angeles, California, April 28, 2005

♢ Class Action Fairness Act, Akin Gump Strauss Hauer Feld, Century City, CA, April 20, 2005

SELECTED OTHER LITIGATION EXPERIENCE

United States Supreme Court

♢ Co-counsel on petition for writ of *certiorari* concerning application of the voluntary cessation doctrine to government defendants (*Rosebrock v. Hoffman*, 135 S. Ct.1893 (2015))

♢ Authored *amicus* brief filed on behalf of civil procedure and complex litigation law professors concerning the importance of the class action lawsuit (*AT&T Mobility v. Concepcion,* No. 09-893, 131 S. Ct. 1740 (2011))

♢ Co-counsel in constitutional challenge to display of Christian cross on federal land in California's Mojave preserve (*Salazar v. Buono*, 130 S. Ct. 1803 (2010))

♢ Co-authored *amicus* brief filed on behalf of constitutional law professors arguing against constitutionality of Texas criminal law (*Lawrence v. Texas*, 539 U.S. 558 (2003))

♢ Co-authored *amicus* brief on scope of *Miranda* (*Illinois v. Perkins*, 496 U.S. 292 (1990))

Attorney's Fees

♢ Appointed by the United States Court of Appeals for the Second Circuit to argue for affirmance of district court fee decision in complex securities class action, with result that the Court summarily affirmed the decision below (*In re Indymac Mortgage-Backed Securities Litigation*, 94 F.Supp.3d 517 (S.D.N.Y. 2015), *aff'd sub. nom*., *Berman DeValerio v. Olinsky*, No. 15-1310-cv, 2016 WL 7323980 (2d Cir. Dec. 16, 2017))

♢ Served as *amicus curiae* and co-authored *amicus* brief on proper approach to attorney's fees in common fund cases, relied on by the court in *Laffitte v. Robert Half Int'l Inc*., 1 Cal. 5th 480, 504, 376 P.3d 672, 687 (2016).

Consumer Class Action

♢ Co-counsel in challenge to antenna-related design defect in Apple's iPhone4 (*Dydyk v. Apple Inc.,* 5:10-cv-02897-HRL, U.S. Dist. Court, N.D. Cal.) (complaint filed June 30, 2010)

♢ Co-class counsel in $8.5 million nationwide class action settlement challenging privacy concerns raised by Google's Buzz social networking program (*In re Google Buzz Privacy Litigation,* 5:10-cv-00672-JW, U.S. Dist. Court, N.D. Cal.) (amended final judgment June 2, 2011)

Disability

♢ Co-counsel in successful ADA challenge ($500,000 jury verdict) to the denial of health care in emergency room (*Howe v. Hull*, 874 F. Supp. 779, 873 F. Supp 72 (N.D. Ohio 1994))

Employment

♢ Co-counsel in challenges to scope of family benefit programs (*Ross v. Denver Dept. of Health*, 883 P.2d 516 (Colo. App. 1994)); *(Phillips v. Wisc. Personnel Com'n*, 482 N.W.2d 121 (Wisc. 1992))

Equal Protection

♢ Co-counsel in (state court phases of) successful challenge to constitutionality of a Colorado ballot initiative, Amendment 2 (*Evans v. Romer*, 882 P.2d 1335 (Colo. 1994))

♢ Co-counsel (and *amici*) in challenges to rules barring military service by gay people (*Able v. United States*, 44 F.3d 128 (2d Cir. 1995); *Steffan v. Perry*, 41 F.3d 677 (D.C. Cir. 1994) (en banc))

♢ Co-counsel in challenge to the constitutionality of the Attorney General of Georgia's firing of staff attorney (*Shahar v. Bowers*, 120 F.3d 211 (11th Cir. 1997))

Fair Housing

♢ Co-counsel in successful Fair Housing Act case on behalf of group home (*Hogar Agua y Vida En el Desierto v. Suarez-Medina*, 36 F.3d 177 (1st Cir. 1994))

Family Law

♢ Co-counsel in challenge to constitutionality of Florida law limiting adoption (*Cox v. Florida Dept. of Health and Rehab. Srvcs.*, 656 So.2d 902 (Fla. 1995))

♢ Co-authored *amicus* brief in successful challenge to Hawaii ban on same-sex marriages (*Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993))

First Amendment

♢ Co-counsel in successful challenge to constitutionality of Alabama law barring state funding foruniversity student groups (*GLBA v. Sessions*, 930 F.Supp. 1492 (M.D. Ala. 1996))

♢ Co-counsel in successful challenge to content restrictions on grants for AIDS education materials (*Gay Men's Health Crisis v. Sullivan*, 792 F.Supp. 278 (S.D.N.Y. 1992))

Landlord / Tenant

♢ Lead counsel in successful challenge to rent control regulation (*Braschi v. Stahl Associates Co.*, 544 N.E.2d 49 (N.Y. 1989))

Police

♢ Co-counsel in case challenging DEA brutality (*Anderson v. Branen*, 27 F.3d 29 (2nd Cir. 1994))

Racial Equality

♢ Co-authored *amicus* brief for constitutional law professors challenging constitutionality of Proposition 209 *(Coalition for Economic Equity v. Wilson*, 110 F.3d 1431 (9th Cir. 1997))

SELECTED OTHER PUBLICATIONS

Editorials

♢ *Follow the Leaders*, NEW YORK TIMES, March 15, 2005
♢ *Play It Straight*, NEW YORK TIMES, October 16, 2004
♢ *Hiding Behind the Constitution*, NEW YORK TIMES, March 20, 2004
♢ *Toward More Perfect Unions,* NEW YORK TIMES, November 20, 2003 (with Brad Sears)
♢ *Don't Ask, Don't Tell. Don't Believe It*, NEW YORK TIMES, July 20, 1993
♢ *AIDS: Illness and Injustice*, WASH. POST, July 26, 1992 (with Nan D. Hunter)

BAR ADMISSIONS

♢ Massachusetts (2008)
♢ California (2004)
♢ District of Columbia (1987) (inactive)
♢ Pennsylvania (1986) (inactive)

♢ U.S. Supreme Court (1993)

♢ U.S. Court of Appeals for the First Circuit (2010)
♢ U.S. Court of Appeals for the Second Circuit (2015)
♢ U.S. Court of Appeals for the Fifth Circuit (1989)
♢ U.S. Court of Appeals for the Ninth Circuit (2004)
♢ U.S. Court of Appeals for the Eleventh Circuit (1993)
♢ U.S. Court of Appeals for the D.C. Circuit (1993)

♢ U.S. District Courts for the Central District of California (2004)
♢ U.S. District Court for the District of the District of Columbia (1989)
♢ U.S. District Court for the District of Massachusetts (2010)
♢ U.S. District Court for the Northern District of California (2010)

EXHIBIT B

Arkansas Teacher Retirement System et al.
v.
State Street Bank and Trust Co.
C.A. No. 11-10230-MLW; 11-12049-MLW; 12-11698-MLW
Expert Declaration of William B. Rubenstein

EXHIBIT B

Partial List of Documents Reviewed by Professor Rubenstein
(other than case law and scholarship on the relevant issues)

1. Class Action Complaint, ECF No. 1
2. Amended Class Action Complaint, ECF No. 10
3. Memorandum of Law in Support of Plaintiff's Assented-to Motion for Appointment of Interim Lead Counsel and Liaison Counsel for the Proposed Class, ECF No. 8
4. Memorandum in Support of Defendant's Motion to Dismiss, ECF No. 19
5. Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss, ECF No. 22
6. Reply Memorandum in Support of Defendant's Motion to Dismiss, ECF No. 29
7. Order Granting in Part and Denying in Part Defendant's Motion to Dismiss, ECF No. 33
8. Stipulation and Joint Motion to Continue Stay, ECF No. 66
9. Stipulation and Joint Motion to Continue Stay, ECF No. 71
10. Stipulation and Joint Motion to Continue Stay, ECF No. 75
11. Stipulation and Agreement of Settlement, ECF No. 89
12. Memorandum of Law in Support of Plaintiffs' Assented-to Motion for Preliminary Approval of Proposed Class Settlement, Preliminary Certification of Settlement Class, and Approval of Proposed Form and Manner of Class Notice, ECF No. 91
13. Declaration of Lawrence A. Sucharow in Support of Plaintiffs' Assented-to Motion for Preliminary Approval of Proposed Class Settlement, Preliminary Certification of Settlement Class, and Approval of Proposed Form and Manner of Class Notice, ECF No. 92
14. Exhibit A: Letter Dated March 18, 2011, ECF No. 92-1
15. Exhibit B: Labaton Sucharow Firm Resume, ECF No. 92-2
16. Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, ECF No. 97
17. Defendants' Memorandum in Support of Class Action Settlement, ECF No. 99
18. Plaintiffs' Assented-to Motion for Final Approval of Proposed Class Settlement and Plan of Allocation and Final Certification of Settlement Class, ECF No. 100
19. Lead Counsel's Motion for an Award of Attorneys' Fees, Payment of Litigation Expenses of Service Awards to Plaintiffs, ECF No. 102
20. [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
21. Declaration of Lawrence A. Sucharow in Support of (A) Plaintiffs' Assented-to Motion for Final Approval of Proposed Class Settlement and Plan of Allocation and Final Certification of Settlement Class and (B) Lead Counsel's Motion for an Award of

Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs, ECF No. 104

22. Exhibit 1: Declaration of George Hopkins in Support of Final Approval of Class Settlement, Award of Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Award to ARTRS, ECF No. 104-1
23. Exhibit 2: Letter Dates March 18, 2011, ECF No. 104-2
24. Exhibit 3: Motion to Dismiss, ECF No. 104-3
25. Exhibit 4: Lobby Conference Before Chief Judge Mark L. Wolf, ECF No. 104-4
26. Exhibit 5: Declaration of Jonathan B. Marks, ECF No. 104-5
27. Exhibit 15: 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
28. Exhibit 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, ECF No. 104-16
29. Exhibit 17: 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, ECF No. 104-17
30. Exhibit 18: Declaration of Lynn Sarko on Behalf of The Andover Companies Employee Savings and Profit Sharing Plan and James Pehoushek-Strangeland in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses, ECF No. 104-18
31. Exhibit 19: Declaration of J. Brian McTigue in Support of Motion for Attorneys' fees, Reimbursement of Expenses, and Incentive Awards to Certain Class Representatives, ECF No. 104-19
32. Exhibit 20: Declaration of Carl S. Kravitz in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses, ECF No. 104-20
33. Exhibit 21: Declaration of Catherine M. Campbell on Behalf of Feinberg, Campbell & Zack, PC in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses, ECF No. 104-21
34. Exhibit 22: Declaration of Jonathan G. Axelrod on Behalf of Beins, Axelrod, PC in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses, ECF No. 104-22
35. Exhibit 23: Declaration of Kimberly Keevers Palmer on Behalf of Richardson, Patrick, Westbrook & Brickman, LLC in Support of Lead Counsel's Motion for an Award of Attorneys' fees and Payment of Expenses, ECF No. 104-23
36. Exhibit 24: Master Chart of Lodestars, Litigation Expenses, and Plaintiffs' Service Awards, ECF No. 104-24
37. Exhibit 25: Rate Tables, ECF No. 104-25
38. Defendant's Statement of Reporting Status of Class Action Settlement, ECF No. 106
39. Reply Memorandum of Law in Further Support of (A) Plaintiffs' Assented-to Motion for Final Approval of Proposed Class Settlement and Plan of Allocation and Final Certification of Settlement Class and (B) Lead Counsel's Motion for an Award of Attorneys' fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs, ECF No. 108

40. Supplemental Declaration of Eric J. Miller on Behalf of A.B. Data, Ltd. Regarding Mailing of Notice to Settlement Class Members and Requests for Exclusion, ECF No. 109
41. Order and Final Judgment, ECF No. 110
42. Order Awarding Attorneys' fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs, ECF No. 111
43. Order Approving Plan of Allocation, ECF No. 112
44. Hearing Transcript, ECF No. 114
45. Letter Dated November 10, 2016, ECF No. 116
46. Memorandum and Order, ECF No. 117
47. The Competitive Enterprise Institute's Center for Class Action Fairness's Memorandum in Support of Motion for Leave to File *Amicus Curiae* Response to Court's Order of February 6 and for Leave to Participate as *Guardian ad Litem* for Class or *Amicus* in Front of Special Master, ECF No. 127
48. Memorandum of Lieff Cabraser Heimann & Bernstein, LLP Consenting to Appointment of Special Master, ECF No. 128
49. Memorandum of Labaton Sucharow LLP Consenting to Appointment of Special Master and Proposing Appointment of Co-Special Master, ECF No. 129
50. Order Regarding Class Notice, ECF No. 172
51. Memorandum and Order Regarding Appointment of Judge Rosen as Special Master, ECF No. 173
52. The Competitive Enterprise Institute's Center for Class Action Fairness's *Amicus* Response to Court's Order of February 6 – Leave to File granted March 8, 2017 (Dkt. 172), ECF No. 174
53. Memorandum and Order Regarding Class Notice, ECF No. 187
54. Memorandum and Order Regarding Motion for Relief from Fee Order, ECF No. 192
55. Special Master's Order Regarding the Law Firms' Objection to Retention of John W. Toothman as Advisor to Counsel to the Special Master, ECF No. 193
56. Objection of Labaton Sucharow LLP, Lieff Cabraser Heimann & Bernstein, LLP, and Thornton Law Firm LLP to Proposed Appointment of John W. Toothman as Expert in Proceeding Before the Special Master, ECF No. 194
57. Objection Plaintiffs' Law Firms' Objection to Special Master's Order Regarding Retention of John W. Toothman, ECF No. 199
58. Memorandum and Order Regarding Emergency Motion, ECF No. 200
59. Exhibit A: Notice of Proceedings that Could Result in an Additional Award to Class Members Who Have Claims, ECF No. 200-1
60. Exhibit B: Notice of Proceedings that Could Result in an Additional award to Class Members Who Have Claims, ECF No. 200-2
61. Declaration of Eric J. Miller on Behalf of A.B. Data, Ltd. Regarding Mailing and Emailing of Supplemental Notice to Settlement Class Members and/or Their Counsel, ECF No. 202
62. Order Regarding Email Addresses, ECF No. 203
63. Memorandum and Order – Toothman Order, ECF No. 204
64. Labaton Sucharow's Response to the Court's April 26, 2017 Order, ECF No. 205
65. Exhibit A: Declaration of Nicole M. Zeiss in Response to the Court's April 26, 2017 Order, ECF No. 205-1

66. Exhibit B: Declaration of Eric J. Miller on Behalf of A.B. Data, Ltd. in Response to the Court's April 26, 2017 Order, ECF No. 205-2
67. Memorandum and Order Regarding Special Master Billing Rate, ECF No. 206
68. Labaton Sucharow LLP's Response to Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories to Labaton Sucharow LLP – June 1 Response
69. Lieff Cabraser Heimann & Bernstein LLP's Responses to Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories Due on June 1, 2017
70. Thornton Law Firm, LLP's June 1, 2017 Responses to Special master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories
71. 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
72. 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
73. Thornton Law Firm, LLP's June 9, 2017 Responses to Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories
74. Lieff Cabraser Heimann & Bernstein LLP's Corrected Responses to Special Master Honorable Gerald E. Rosen's (Ret.) Interrogatories Nos. 43 and 44
75. Labaton Sucharow LLP's Response to Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories to Labaton Sucharow LLP – July 10 Response
76. Lieff Cabraser Heimann & Bernstein LLP's Responses to Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories Due on July 10, 2017
77. Thronton Law Firm, LLP's July 10, 2017 Responses to Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories

EXHIBIT C

Arkansas Teacher Retirement System et al.
v.
State Street Bank and Trust Co.
C.A. No. 11-10230-MLW; 11-12049-MLW; 12-11698-MLW
Expert Declaration of William B. Rubenstein

EXHIBIT C
Massachusetts Cases Affirming Class Action Fee Awards

1. *Allen v. Decision One Mortg. Co., LLC*, No. CIV.A. 07-11669-GAO, 2010 WL 1930148 (D. Mass. May 12, 2010)
2. *Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324 (D. Mass.), aff'd, 809 F.3d 78 (1st Cir. 2015)
3. *Commonwealth Care All. v. Astrazeneca Pharm. L.P.*, No. CIV.A. 05-0269 BLS 2, 2013 WL 6268236 (Mass. Super. Aug. 5, 2013)
4. *Davis v. Footbridge Eng'g Servs., LLC*, No. 09CV11133-NG, 2011 WL 3678928 (D. Mass. Aug. 22, 2011)
5. *Geanacopoulos v. Philip Morris USA Inc.*, No. 98-6002-BLS1, 2016 WL 757536 (Mass. Super. Feb. 24, 2016)
6. *Gov't Employees Hosp. Ass'n v. Serono Int'l, S.A.*, 246 F.R.D. 93 (D. Mass. 2007)
7. *Hill v. State St. Corp.*, No. CIV.A. 09-12146-GAO, 2015 WL 127728 (D. Mass. Jan. 8, 2015), appeal dismissed, 794 F.3d 227 (1st Cir. 2015)
8. *In re Celexa & Lexapro Mktg. & Sales Practices Litig.*, No. MDL 09-2067-NMG, 2014 WL 4446464 (D. Mass. Sept. 8, 2014)
9. *In re Evergreen Ultra Short Opportunities Fund Sec. Litig.*, No. CIV.A. 08-11064-NMG, 2012 WL 6184269 (D. Mass. Dec. 10, 2012)
10. *In re JPMorgan Chase Mortg. Modification Litig.*, 18 F. Supp. 3d 62 (D. Mass. 2014)
11. *In re Prudential Ins. Co. of Am. SGLI/VGLI Contract Litig.*, No. 3:10-CV-30163-MAP, 2014 WL 6968424 (D. Mass. Dec. 9, 2014)
12. *In re Relafen Antitrust Litig.*, 231 F.R.D. 52 (D. Mass. 2005)
13. *In re TJX Companies Retail Sec. Breach Litig.*, 584 F. Supp. 2d 395 (D. Mass. 2008)
14. *Latorraca v. Centennial Techs. Inc.*, 834 F. Supp. 2d 25 (D. Mass. 2011)
15. *Mann & Co., PC v. C-Tech Indus., Inc.*, No. CIV.A.08-11312-RGS, 2010 WL 457572 (D. Mass. Feb. 5, 2010)
16. *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, No. CIV.A. 05-11148PBS, 2009 WL 2408560 (D. Mass. Aug. 3, 2009)
17. *Pietrantonio v. Ann Inc.*, No. 13-CV-12721-RGS, 2014 WL 3973995 (D. Mass. Aug. 14, 2014)
18. *Rudy v. City of Lowell*, 883 F. Supp. 2d 324 (D. Mass. 2012)
19. *Stokes v. Saga Int'l Holidays, Ltd.*, 376 F. Supp. 2d 86 (D. Mass. 2005)
20. *Tyler v. Michaels Stores, Inc.*, 150 F. Supp. 3d 53 (D. Mass. 2015)

EXHIBIT D

Arkansas Teacher Retirement System et al.
v.
State Street Bank and Trust Co.
C.A. No. 11-10230-MLW; 11-12049-MLW; 12-11698-MLW
Expert Declaration of William B. Rubenstein

EXHIBIT D

Massachusetts Bankruptcy Cases Containing Corporate Firm Billing Rates

1. *In re Houghton Mifflin Harcourt Publishing Company*, 12-BK-15610 (Bankr. D. Mass. 2012), ECF. No. 168
2. *In re Lexington Jewelers Exch., Inc.*, No. 08-10042-WCH, 2013 WL 2338243 (Bankr. D. Mass. May 29, 2013), ECF No. 439-1
3. *In re McCabe Grp.*, 424 B.R. 1 (Bankr. D. Mass.), *aff'd in part, rev'd in part sub nom. McCabe v. Braunstein*, 439 B.R. 1 (D. Mass. 2010), ECF No. 404-8
4. *In re Oscient Pharm. Corp.*, No. 09-16576-HJB, 2010 WL 6602493 (Bankr. D. Mass. June 29, 2010); ECF No. 485
5. *In re Oscient Pharm. Corp.*, No. 09-16576-HJB, 2010 WL 6602493 (Bankr. D. Mass. June 29, 2010); ECF No. 487-6
6. *In re The Educ. Res. Inst., Inc.*, 442 B.R. 20 (Bankr. D. Mass. 2010), ECF No. 1196-1

EXHIBIT E

Arkansas Teacher Retirement System et al.
v.
State Street Bank and Trust Co.
C.A. No. 11-10230-MLW; 11-12049-MLW; 12-11698-MLW
Expert Declaration of William B. Rubenstein

EXHIBIT E
Class Actions Settlements with Funds of $100-$500 Million

1. *Dial Corp. v. News Corp.*, 317 F.R.D. 426 (S.D.N.Y. 2016)
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
3. *In re Am. Int'l Grp., Inc. Sec. Litig.*, 293 F.R.D. 459 (S.D.N.Y. 2013), ECF No. 634-23
4. *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (NGG), 2010 WL 2653354 (E.D.N.Y. June 24, 2010)
5. *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110 (S.D.N.Y. 2009)
6. *In re High-Tech Employee Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 WL 5158730 (N.D. Cal. Sept. 2, 2015)
7. *In re IndyMac Mortg.-Backed Sec. Litig.*, 94 F. Supp. 3d 517 (S.D.N.Y. 2015)
8. *In re Lupron Mktg. & Sales Practices Litig.*, No. 01-CV-10861-RGS, 2005 WL 2006833 (D. Mass. Aug. 17, 2005)
9. *In re Nortel Networks Corp.*, No. 01-CV-1855(RMB), 2002 WL 1492116 (S.D.N.Y. Feb. 4, 2002), ECF No. 194
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]
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]
12. *In re Shop-Vac Mktg. & Sales Practices Litig.*, No. 2380, 2016 WL 7178421 (M.D. Pa. Dec. 9, 2016)
13. *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246 (E.D. Va. 2009)
14. *In re Volkswagen & Audi Warranty Extension Litig.*, 89 F. Supp. 3d 155 (D. Mass. 2015)
15. *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, No. 15-CV-1113 (VAB), 2016 WL 6542707 (D. Conn. Nov. 3, 2016)
16. *N.Y. State Teachers' Ret. Sys. v. Gen. Motors Co.*, 315 F.R.D. 226 (E.D. Mich. 2016)
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
18. *Nitsch v. DreamWorks Animation SKG Inc.*, No. 14-CV-04062-LHK, 2017 WL 2423161 (N.D. Cal. June 5, 2017)
19. *Pennsylvania Pub. Sch. Employees' Ret. Sys. v. Bank of Am. Corp.*, 318 F.R.D. 19, 23 (S.D.N.Y. 2016)
20. *Shapiro v. JPMorgan Chase & Co.*, No. 11 CIV. 7961 CM, 2014 WL 1224666 (S.D.N.Y. Mar. 24, 2014)

EXHIBIT F

Arkansas Teacher Retirement System et al.
v.
State Street Bank and Trust Co.
C.A. No. 11-10230-MLW; 11-12049-MLW; 12-11698-MLW
Expert Declaration of William B. Rubenstein

EXHIBIT F
Reported Class Action Fee Decisions
Containing Billing Rates for Contract or Staff Attorneys

1. *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877 (C.D. Cal. 2016), *judgment entered*, No. SACV111733FMOMLGX, 2016 WL 5921765 (C.D. Cal. Oct. 11, 2016), ECF No. 218-8
2. *City of Providence v. Aeropostale, Inc.*, No. 11 CIV. 7132 CM GWG, 2014 WL 1883494 (S.D.N.Y. May 9, 2014), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015), ECF No. 61-4
3. *In re Am. Apparel, Inc. S'holder Litig..*, No. CV1006352MMMJCGX, 2014 WL 10212865 (C.D. Cal. July 28, 2014), ECF No. 188-3
4. *In re Animation Workers Antitrust Litig.*, No. 14-CV-4062-LHK, 2016 WL 6663005 (N.D. Cal. Nov. 11, 2016), ECF Nos. 331-2, 331-3, 331-4
5. *In re High-Tech Employee Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 WL 5158730 (N.D. Cal. Sept. 2, 2015), ECF No. 1083-20
6. *In re Optical Disk Drive Prod. Antitrust Litig.*, No. 3:10-MD-2143 RS, 2016 WL 7364803 (N.D. Cal. Dec. 19, 2016), ECF No. 1963-1
7. *Long v. HSBC USA INC.*, No. 14 CIV. 6233 (HBP), 2016 WL 4764939 (S.D.N.Y. Sept. 13, 2016)
8. *McGreevy v. Life Alert Emergency Response, Inc.*, No. 14 CIV. 7457 (LGS), 2017 WL 1534452 (S.D.N.Y. Apr. 28, 2017)
9. *Mills v. Capital One, N.A.*, No. 14 CIV. 1937 HBP, 2015 WL 5730008 (S.D.N.Y. Sept. 30, 2015), ECF No. 52
10. *Phillips v. Triad Guar. Inc.*, No. 1:09CV71, 2016 WL 2636289 (M.D.N.C. May 9, 2016), ECF No. 145-1
11. *Rose v. Bank of Am. Corp.*, No. 5:11-CV-02390-EJD, 2014 WL 4273358 (N.D. Cal. Aug. 29, 2014)
12. *St. Louis Police Ret. Sys. v. Severson*, No. 12-CV-5086 YGR, 2014 WL 3945655 (N.D. Cal. Aug. 11, 2014)

EXHIBIT G

Arkansas Teacher Retirement System et al.
v.
State Street Bank and Trust Co.
C.A. No. 11-10230-MLW; 11-12049-MLW; 12-11698-MLW
Expert Declaration of William B. Rubenstein

EXHIBIT G
List of Exemplary Cases With Multipliers Over 3.5

1. In re Merry-Go-Round Enterprises, Inc., 244 B.R. 327 (Bankr. D. Md. 2000) (19.6 multiplier)

2. Stop & Shop Supermarket Co. v. SmithKline Beecham Corp., NO. CIV.A. 03-457, 2005 WL 1213926, at *17-18 (E.D. Pa. May 19, 2005) (15.6 multiplier)

3. Kuhnlein v. Department of Revenue, 662 So.2d 309, 315 (Fla. 1995) (15 multiplier reduced to 5)

4. In re Doral Fin. Corp. Sec. Litig., No. 05-md-1706 (S. D. N.Y. July 17, 2007) (10.26 multiplier)

5. Weiss v. Mercedes-Benz, 899 F. Supp. 1297 (D. N.J. 1995), aff'd, 66 F.3d 314 (3d Cir. 1995) (9.3 multiplier)

6. Doty v. Costco Wholesale Corp., No. 05-3241 (C. D. Cal. May 14, 2007) (9 multiplier)

7. Conley v. Sears, Roebuck & Co., 222 B.R. 181 (D. Mass. 1998) (8.9 multiplier)

8. Cosgrove v. Sullivan, 759 F. Supp. 1667, 167 n.1 (S. D. N.Y. 1991) (8.74 multiplier)

9. New England Carpenters Health Benefits Fund v. First Databank, Inc., Civil Action No. 05-11148-PBS, 2009 WL 2408560 (D. Mass. Aug. 3, 2009) (8.3 multiplier)

10. Newman v. Caribiner Int'l, Inc., No. 99 Civ. 2271 (S.D. N.Y. Oct. 19, 2001) (7.7 multiplier)

11. Hainey v. Parrott, No. 02-733 (S. D. Ohio Nov. 6, 2007) (7.47 effective multiplier)

12. In re Rite Aid Corp. Sec. Litigation, 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (6.96 multiplier)

13. Steiner v. Amer. Broadcasting Co., Inc., 248 Fed. Appx. 780, 783 (9th Cir. 2007) (6.85 multiplier)

14. In re UnitedHealth Group, Inc. PSLRA Litig., No. 06-1691 (D. Minn. Aug. 10, 2009) (6.49 multiplier)

15. The Music Force, LLC v. Viacom, Inc., No. 04-8239 (C.D. Cal. Aug. 8, 2007) (6.43 multiplier)

16. In re Boston and Maine Corp. v. Sheehan, Phinney, Bass & Green, P.A., 778 F.2d 890 (1st Cir. 1985) (6 multiplier)

17. In re Cardinal Health Inc. Securities Litigations, 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007) (6 multiplier)

18. In re Krispy Kreme Doughnuts, Inc. Sec. Litig., No. 04-416 (M.D. N.C. Feb. 15, 2007) (6 multiplier)

19. In re RJR Nabisco, Inc. Securities Litigation, No. 88 Civ. 7905(MBM), 1992 WL 210138, at *5-6 (S.D. N.Y. Aug. 14, 1992) (6 multiplier)

20. Spartanburg Reg'l Health Servs. Dist., Inc. v. Hillenbrand Indus., Inc., No. 03-2141 (D. S.C. Aug. 15, 2006) (6 multiplier)

21. In re Cardinal Health, Inc. Sec. Litig., No. 04-575, 2007 U.S. Dist. LEXIS 95127 (S. D. Ohio Dec. 31, 2007) (5.85 multiplier)

22. Dutton v. D&K Healthcare Res., Inc., No. 04-147 (E. D. Mo. June 5, 2007) (5.6 multiplier)

23. In re Charter Communications, Inc., Securities Litigation, No. MDL 1506, 2005 WL 4045741, at * 22 (E.D. Mo. June 30, 2005) (5.6 multiplier)

24. Roberts v. Texaco, Inc., 979 F. Supp. 185, 198 (S.D. N.Y. 1997) (5.5 multiplier)

25. Warner v. Experian Info. Solutions, Inc., No. BC362599 (Cal. Super. Ct. Los Angeles Co. Feb. 26, 2009) (5.48 multiplier)

26. Davis v. J.P. Morgan Chase & Co., 827 F. Supp. 2d 172, 185 (W.D.N.Y. 2011) (5.3 multiplier)

27. Di Giacomo v. Plains All American Pipeline, No. Civ.A.H-99-4137, 2001 WL 34633373, * at 11-12 (S.D. Tex. Dec. 19, 2001) (5.3 multiplier)

28. Craft v. County of San Bernardino, 624 F. Supp. 2d 1113, 1123-25 (C.D. Cal. 2008) (5.2 multiplier)

29. In re Enron Corp. Securities, Derivative & ERISA Litigation, 586 F. Supp. 2d 732, 803 (S.D. Tex. 2008) (5.2 multiplier)

30. In re Beverly Hills Fire Litig., 639 F. Supp. 915, 924 (E. D. Ky. 1986) (5 multiplier to attorney who performed the bulk of work on the case)

31. In re Fernald Litigation, No. C-1-85-149, 1989 WL 267038, at *4-5 (S.D. Ohio Sept. 29, 1989) (5 multiplier)

32. In re Cendant Corp. Securities Litigation, 404 F.3d 173, 183 (3d Cir. 2005) (multiplier in "mid-single digits")

33. In re United Rentals, Inc. Sec. Litig., No. 04-1615 (D. Conn. May 26, 2009) (4.79 multiplier)

34. Castillo v. General Motors Corp., No. 07-2142 (E. D. Cal. April 19, 2009) (4.77 multiplier)

35. Meijer, Inc. v. 3M, No. 04-5871, 2006 WL 2382718 (E. D. Pa. Aug. 14, 2006) (4.77 multiplier)

36. In re Xcel Energy, Inc., Securities, Derivative & "ERISA" Litigation, 364 F. Supp. 2d 980, 999 (D. Minn. 2005) (4.7 multiplier)

37. Maley v. Del Global Technologies Corp., 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002) (4.65 multiplier)

38. Teeter v. NCR Corp., No. 08-297 (C.D. Cal. Aug. 6, 2009) (4.61 multiplier)

39. Holleran v. Rita Medical Sys., Inc., No. RG06302394 (Cal. Super. Ct. Alameda Co. Aug. 1, 2007) (4.57 multiplier)

40. Rabin v. Concord Assets Group, Inc., No. 89 Civ. 6130, 1991 WL 275757 (S.D. N.Y. Dec. 19, 1991) (4.4 multiplier)

41. Agofonova v. Nobu Corp., No. 07-6926 (S. D. N.Y. Feb. 6, 2009) (4.34 multiplier)

42. Buccellato v. AT & T Operations, Inc., No. C10-00463-LHK, 2011 WL 3348055, at *2 (N.D. Cal. Jun. 30, 2011) (4.3 multiplier)

43. In re AremisSoft Corp. Sec. Litig., 210 F.R.D. 109, 135 (D.N.J. 2002) (4.3 multiplier)

44. Shannon v. Hidalgo County Board of Comm'r, No. 08-369 (D. N.M. June 4, 2009) (4.2 multiplier)

45. Simmons v. Andarko Petroleum Corp., No. CJ-2004-57 (Okla. Dist. Ct. Caddo Co. Dec. 23, 2008) (4.17 multiplier)

46. In re OSI Pharm., Inc. Sec. Litig., No. 04-5505 (E.D. N.Y. Aug. 22, 2008) (4.11 multiplier)

47. Blackmoss Inv., Inc. v. Gravity Co., No. 05-4804 (S. D. N.Y. Nov. 20, 2007) (4.0 multiplier)

48. In re WorldCom, Inc. Sec. Litig., 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2003) (4.0 multiplier)

49. In re NASDAQ Market-Makers Antitrust Litig., 187 F.R.D. 465, 489 (S.D. N.Y. 1998) (3.97 multiplier)

50. Karpus v. Borelli (In re Interpublic Secs. Litig.), No. 02 Civ. 6527, 2004 WL 2397190, at *12 (S.D. N.Y. Oct. 26, 2004 (3.96 multiplier)

51. Vizcaino v. Microsoft Corp., 290 F.3d 1045, 1050-51 (9th Cir. 2002) (3.65 multiplier)

52. Donkerbrook v. Title Guar. Escrow Servs., Inc., No. 10-00616 LEK-RLP, 2011 WL 3649539, at *10 (D. Haw. Aug. 18, 2011) (3.6 multiplier)

53. Turner v. Murphy Oil USA, Inc., 472 F. Supp. 2d 830, 869 (E.D. La. 2007) (3.5 multiplier)

54. Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 123 (2d Cir. 2005) (3.5 multiplier)

EXHIBIT I

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.) SUPPLEMENTAL INTERROGATORIES DUE ON AUGUST 11, 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.) Supplemental Interrogatories (the "Interrogatories"), propounded on LCHB on August 7, 2017, and made due on August 11, 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 date(s) specified by the Special Master. 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 SUPPLEMENTAL INTERROGATORIES

INTERROGATORY NO. 1:

Describe in detail the nature of the relationship and/or partnership between and among Labaton, Lieff and/or Thornton, on the one hand, and Damon Chargois, Esq. (or any firm represented by Mr. Chargois), whether past or present. In your answer, please include the following:

a. The origins of the relationship, including a detailed description of any past legal, financial, and/or professional affiliations between the Firm, on the one hand, and Mr. Chargois or any firm represented by Mr. Chargois, on the other, and if applicable a case caption or description of the matter;

b. Whether the Plaintiffs' Firms intended to pay a portion of the Fee Award to Mr. Chargois, whether or not said payment was made, and if so, the total amount of the intended (or actual) payment, date(s) of any payments made, and the basis therefor;

c. To the extent Mr. Chargois was involved in the SST Litigation, or contributed in any way to the investigation, litigation, mediation and/or settlement of the Litigation, describe in detail the nature of his involvement, the dates of any work performed, and any individuals and/or firms with knowledge of said involvement;

d. The nature of any proposed or actual agreements, whether informal or formal, between and among Labaton, Lieff, and/or Thornton, on the one hand, and Mr. Chargois, to compensate Mr. Chargois a percentage of the total attorney's fees awarded in the SST Litigation, regardless of the total amount of that aggregate fee;

e. The significance of Bob Lieff's email to Garrett Bradley, Michael Thornton, Eric Belfi, 'cc' Damon Chargois, Christopher Keller, and Daniel Chiplock, dated April 24, 2013 (Exhibit A), corresponding with Garrett Bradley concerning an obligation to pay "local counsel"

assisting Labaton in matters involving the Arkansas Teachers Retirement System 20% of the net fee to Labaton; and

f. Explain why the nature of this relationship and any intention to pay Mr. Chargois was not disclosed to Judge Wolf prior to submitting the Fee Petition nor to the Special Master during the course of his investigation.

RESPONSE TO INTERROGATORY NO. 1:

LCHB incorporates the general objections stated above. LCHB further objects to this Interrogatory on the grounds that it is argumentative, vague, overbroad 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:

LCHB has no relationship with Mr. Chargois. The Firm has no record of having any prior relations with Mr. Chargois on any other matter. The Firm had no contact with Mr. Chargois in the SST Litigation other than several emails on which LCHB attorneys were copied. No LCHB attorney has met or spoken with Mr. Chargois. LCHB has no direct or first-hand knowledge of any relationship and/or partnership between Mr. Chargois and any other firm in the SST Litigation.

a. LCHB does not have and has never had a "relationship and/or partnership" with Mr. Chargois, and does not believe it has ever worked with Mr. Chargois in any other matter.

b. The Plaintiffs' Law Firms did agree that a portion of the Fee Award would be paid to Mr. Chargois, and that payment was made on or about the same date as the payments to other firms in the Litigation (December 8, 2016). The amount paid to Mr. Chargois was 5.5% of the total Fee Award, or $4,099,768.75 (plus any accrued interest). The agreement to pay Mr. Chargois a percentage of the overall attorneys' fee awarded in the SST litigation was based, as it was understood by LCHB, on Mr. Chargois' role as local counsel for Labaton and the

written agreement amongst the Plaintiffs' Law Firms executed on or about August 30, 2016 (produced herewith).

c. LCHB has no firsthand knowledge of Mr. Chargois' involvement in the SST Litigation or the investigation leading up to it.

d. As stated above, a written agreement memorializing the fee allocations to the Plaintiffs' Law Firms, the ERISA firms, and Labaton's local counsel (i.e., Mr. Chargois) was executed on or about August 30, 2016. Prior to that, the Plaintiffs' Law Firms had agreed by email exchange in the summer of 2016 (preceded by earlier emailed correspondence in the April/May 2013 timeframe when the issue was first broached) to allocate 5.5% of the total Fee Award (or an amount estimated to equal 20% of Labaton's share of any Fee Award) to Mr. Chargois.

e. LCHB understood that Bob Lieff's email of April 24, 2013 indicated his agreement to Mr. Bradley's request that Labaton be permitted to satisfy its obligation to Mr. Chargois out of any Fee Award obtained in the SST Litigation.

f. LCHB defers to Labaton (as Lead Counsel) with respect to why the nature of Labaton's relationship with Mr. Chargois and any intention to pay Mr. Chargois a percentage of the Fee Award was not disclosed to the Court prior to submitting the Fee Petition.

With respect to why the foregoing information was not previously included in LCHB's discovery responses to the Special Master, LCHB simply and in good faith did not understand it to be responsive to the Special Master's prior discovery requests. Instead, LCHB understood the Special Master's prior discovery requests concerning the allocation of the Fee Award to be concerned solely with the percentage fee allocation that was made to the ERISA firms. This is because the Annotated and Revised Document Requests to LCHB dated May 23,

2017 (sent via email by Mr. Sinnott to Richard M. Heimann) specifically eliminated former Request No. 20, which sought "[a]ll documents and/or communications relating to or evidencing discussions between and among the Law Firm, the Plaintiffs' Law Firms, and/or ERISA counsel regarding the allocation of a certain percentage of the Fee Award among counsel, including but not limited to agreements to pay ERISA counsel a fixed percentage of the total Fee Award" (emphasis supplied). Similarly, no prior interrogatory sought details concerning the specific fee allocations between and among the Plaintiffs' Law Firms. Instead, Interrogatory No. 17 asked LCHB to "[d]escribe 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" (emphasis supplied). LCHB responded accordingly, including by "explain[ing] the reason for modifying [that] previous agreement, including all persons involved in these discussions and their affiliation/firm." Mr. Chargois had no input or involvement, as far as LCHB is aware, in determining the percentage fee allocation to be made to the ERISA firms.

Dated: August 11, 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 J

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.) SUPPLEMENTAL REQUEST FOR THE PRODUCTION OF DOCUMENTS

In accordance with the Federal Rules of Civil Procedure, Lieff Cabraser Heimann & Bernstein LLP ("LCHB") hereby responds to Special Master Honorable Gerald E. Rosen's (Ret.) Supplemental Request for the Production of Documents propounded on LCHB on August 7, 2017.

GENERAL OBJECTIONS

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

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

2. LCHB objects to the Requests 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 34, and by any court decisions interpreting those Rules.

3. LCHB objects to the Requests 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 actions.

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

5. LCHB will make all reasonable efforts to produce documents responsive to the Requests on or before the date(s) specified by the Special Master. LCHB, however, reserves the right to supplement its productions should it require additional time to complete the production, and/or should responsive documents be discovered following the designated dates for production.

6. LCHB objects to Definition No. 1 to the extent it contemplates the production of documents 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 documents.

RESPONSES TO THE REQUESTS

SUPPLEMENTAL REQUEST FOR PRODUCTION NO. 1:

All documents and/or communications relating to, referencing, or concerning Damon Chargois, Esq. or a law firm with which he was or is affiliated, including any agreements or understanding to which the Firm was privy, whether or not executed, contemplated in the SST Litigation. Please include all documents relating to, supporting, or otherwise evidencing the information provided by the Firm in response to Supplemental Interrogatory No. 1.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

LCHB incorporates the general objections stated above. LCHB further objects to this Request as overbroad to the extent it seeks all documents and/or communications from January 1, 2010 to the present relating to, referencing, or concerning any "law firm with which [Mr. Chargois] was or is affiliated." LCHB does not know Mr. Chargois' employment history or his prior law firm affiliations (if applicable)—it only understands that it has no record of having worked or interacted with him in any context outside of the SST Litigation. Subject to and without waiving those objections, LCHB will produce responsive documents on or before August 11, 2017 as requested.

Dated: August 11, 2017

Respectfully submitted,

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

By: _____
Richard M. Heimann

Attorneys for Lieff Cabraser Heimann & Bernstein, LLP

EXHIBIT K

DONOGHUE BARRETT & SINGAL

September 7, 2017

Via Email

Joan A. Lukey, Esq.
Choate, Hall & Stewart LLP
Two International Place
Boston, MA 02110

Richard M. Heimann, Esq.
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111

Brian T. Kelly, Esq.
Nixon Peabody LLP
100 Summer Street
Boston, MA 02110

Re: Special Master's Request for Additional Supplemental Submission from Labaton Sucharow, LLP, Lieff Cabraser Heimann & Bernstein, LLP, and Thornton Law Firm, LLP

Arkansas Teacher Retirement System, et al v. State Street Corporation, et al., C.A. No. 1:11-cv-10230-MLW;

Dear Joan, Richard, and Brian:

As you know, in July, the Special Master invited your firms to submit, in order to more formally address the factual and legal issues in this case before finalizing his report, any information the firms may find relevant, in order to inform the Special Master's findings, conclusions, and recommendations presented in his Final Report and Recommendation. The firms accepted this invitation and submitted a consolidated response on August 1, 2017.

As discussed on last Tuesday following depositions, the Special Master is now presenting an opportunity for the firms to make a similar submission addressing the circumstances of the monies paid to Attorney Damon Chargois in the State Street case for his role as a referring attorney and the implications of that payment and circumstances in addressing the charge of Judge Wolf in paragraph 2 of his March 8, 2017 Order.

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DONOGHUE BARRETT & SINGAL

Should you deem the additional factors and topics discussed on pages 2 and 3 of our July 5, 2017 letter to be relevant or helpful to your additional submission, please make reference to them. As before, we encourage you to provide any other input that you believe is relevant to or raised by the Special Master's inquiry, to include recommendations on best practices or ways to improve current practices.

Confidentiality

As before, this supplemental submission should be addressed to Counsel for the Special Master and submitted directly to Counsel via email and/or first-class mail and should be received by us no later than October 2, 2017. To maintain the confidentiality of the Special Master's investigation, submissions should not be filed on ECF.

Given the great importance of the anticipated responses, it may be necessary for the Special Master to refer to and/or quote one or more of the firms' responses in his Final Report. In the event such reference becomes part of the Final Report, the Special Master reserves the right to include the firms' submission(s) as an exhibit to his Final Report, which will be made available to the public.

Please feel free to contact me with any questions or concerns.

Thank you.

Very yours truly,

William F. Sinnott
Counsel to the Special Master

EXHIBIT L

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

RESPONSE BY LIEFF CABRASER HEIMANN & BERNSTEIN LLP TO SPECIAL MASTER'S SEPTEMBER 7, 2017 REQUEST FOR SUPPLEMENTAL SUBMISSION

Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser") respectfully provides this individual response ("Response") to the Special Master's September 7, 2017 Request for Supplemental Submission concerning "the circumstances of the monies paid to Attorney Damon Chargois in the State Street case for his role as a referring attorney and the implications of that payment and circumstances in addressing the charge of Judge Wolf in paragraph 2 of his March 8, 2017 Order."

1. At all times throughout the litigation of the State Street matter and up through August 11, 2017, Mr. Chargois was described and represented to Lieff Cabraser as "local counsel" for Labaton Sucharow LLP ("Labaton") and/or the client, the Arkansas Teacher Retirement System ("ATRS"). Mr. Chargois was never described to Lieff Cabraser as a "referring," "forwarding," or any other kind of counsel by Labaton or Garrett Bradley (who was a partner at Thornton Law Firm LLP ("Thornton") throughout the litigation and, starting in or about 2015, also of counsel at Labaton).

2. Specifically, on April 24, 2013 (when Mr. Chargois' role in the litigation as well as his proposed allocation of a portion of the class attorneys' fee was first broached), Mr. Chargois was described to Lieff Cabraser by Mr. Bradley as "local counsel who assists Labaton in matters involving [ATRS]." *See* LCHB-0053483.[1] In subsequent communications in 2015 and 2016, Mr. Chargois was described to Lieff Cabraser variously as the "[A]rkansas local" (LCHB-0053491), the "Arkansas firm" (LCHB-0053531), the "Arkansas component" (*id.*), and "the local attorney in this matter who has played an important role." (LCHB-0053542). *See also* Chiplock Dep. (Sept. 8, 2017) at 102:3-13; 109:19-110:18; 115:8-117:8; 118:9-22.

[1] Mr. Chiplock, who was the principal Lieff Cabraser attorney on the case, was apparently copied on this initial April 24, 2013 email and one or more responses to it, but did not recall receiving them and did not himself reply. *See* Chiplock Dep. (Sept. 8, 2017) at 68:4-24; *see also* LCHB-0053522, 0053538, 0053541.

3. Lieff Cabraser attorneys, on the subsequent handful of occasions when they referenced Mr. Chargois in written communications to attorneys at Labaton and Thornton—which almost exclusively was in the context of discussing attorney fee allocations—referred in kind to Mr. Chargois as the "local counsel," "Arkansas local," "local Arkansas counsel," or simply "Arkansas" counsel. *See, e.g.,* LCHB-0053493, 0053507, 0053513, 0053522, 0053531, 0053549.

4. The "Agreement of Fees" entered into on August 30, 2016, approximately two weeks prior to the submission of the final settlement and fee approval papers to the Court, similarly references Mr. Chargois as "Labaton Sucharow's local counsel." LCHB-0053552. The fee allocation charts circulated by Labaton after final settlement approval had been granted (in November 2016) also refer to Mr. Chargois as "Labaton's Local Counsel." *See* LCHB-0053553-56, 0053560, 0053567.

5. Lieff Cabraser understood Mr. Chargois' stated role as "local counsel" throughout the litigation to mean that he was assisting ATRS and Labaton in Arkansas, including by interfacing with the client and/or performing local client-sided tasks that were helpful to the litigation. This was the type of role with which Lieff Cabraser was generally familiar from prior experience—and was the type of role played by Ohio-based local counsel (for Ohio-based clients) in the BNY Mellon litigation (in which Lieff Cabraser was lead counsel). Lieff Cabraser assumed that Mr. Chargois' role as local counsel was being performed at the behest of (and with the consent of) ATRS. All of the foregoing was consistent with the descriptions offered to Lieff Cabraser by Labaton and Mr. Bradley of Mr. Chargois' status and role in the litigation. *See, e.g.,* Chiplock Dep. (Sept. 8, 2017) at 101:24-104:18; 109:19-111:9; 115:8-118:22.

6. Lieff Cabraser did not learn that Mr. Chargois (a) actually was not local counsel, (b) had performed no work in the State Street litigation, and (c) was not known to the client

representative for ATRS (George Hopkins), until after Mr. Hopkins (of ATRS) and Mr. Belfi (of Labaton) were deposed on September 5, 2017.

7. Had the Court ordered an accounting of all attorneys' fees and their planned allocation pursuant to Fed. R. Civ. P. 54, or had asked specific questions to that effect at the final approval hearing, Lieff Cabraser has (and had) no reason to believe that Mr. Chargois' allocation (along with all of the others') would not have been made known to the Court. At no time, ever, did Lieff Cabraser agree to "conceal" the existence of Mr. Chargois from anyone, including ERISA counsel, any clients, or the Court,[2] either before[3] or after the final approval hearing (including in the November 28, 2017 "clawback" letter which Lieff Cabraser did not draft and which, without Lieff Cabraser's input, did not divulge Mr. Chargois' identity or fee interest to ERISA counsel).[4]

Dated: November 3, 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

[2] *See, e.g.,* Chiplock Dep. (Sept. 8, 2017) at 100:7-101:23; 104:19-105:7; 108:19-109:7; 119:4-20; 140:4-141:10.

[3] Mr. Chiplock himself was not aware of Mr. Chargois when the original agreement memorializing a 9% fee allocation for ERISA counsel was signed in December 2013. *See* Chiplock Dep. (Sept. 8, 2017) at 120:19 – 121:15; *see also* LCHB-0053522, 0053538, 0053541. Mr. Lieff, for his part, did not recall Mr. Chargois' existence or stated role after the initial April 2013 email exchange until being reminded by Mr. Bradley in 2015 (and then again in 2016) of Mr. Chargois' putative status as local counsel. LCHB-0053531, 0053538.

[4] *See* Sucharow Dep. (Sept. 1, 2017) at 20:22-23:15; 26:1-24. Lieff Cabraser was not copied on the email correspondence concerning the clawback letter in which it was stated there was "no need for ERISA to see Damon's split." *Id*.

EXHIBIT M

From: William Sinnott [mailto:wsinnott@barrettsingal.com]
Sent: Sunday, March 25, 2018 5:27 PM
To: Heimann, Richard M.
Subject: Follow-up to Gillers Deposition

Richard--

At the conclusion of Professor Gillers testimony on Wednesday, you indicated that you have evidence concerning LCHB's state of mind.

We will consider any evidence which you identify in the record, or evidence which you provide that is not currently in the record, that relates to this issue and/or that supports the hypothetical you presented to Prof. Gillers during his second day of deposition.

Any new evidence should be supported by a sworn declaration.

Thanks.

Bill

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EXHIBIT N

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

RESPONSE BY LIEFF CABRASER HEIMANN & BERNSTEIN, LLP TO MARCH 25, 2018 REQUEST BY SPECIAL MASTER

Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser") respectfully provides this response to the Special Master's request dated March 25, 2018, for "any evidence . . . identif[ied] in the record, or evidence . . . not currently in the record" relating to Lieff Cabraser's "state of mind" as to the issue of Damon Chargois's ("Chargois") role in the State Street litigation prior to September 2017, when details concerning his arrangement with Labaton Sucharow LLP ("Labaton") first came to light. This response is accompanied by sworn declarations by both Robert L. Lieff and Daniel P. Chiplock (the latter of which attaches pertinent emails and documents, including Lieff Cabraser's prior Supplemental Submission, dated November 3, 2017, discussing many of the same issues).

Both Mr. Lieff and Mr. Chiplock were questioned at their depositions about Chargois and what they understood regarding his involvement in the State Street case prior to September 2017. Both testified that they understood that Chargois was local counsel for the Arkansas Fund and for Labaton as lead counsel. Although neither directly communicated with Chargois, they were informed that he had played an important role in the litigation and they assumed he had provided legal services that were of value to the client and therefore to the class. They were familiar with the role of local counsel in cases like State Street, and understood that Chargois's role was similar to that of the Ohio funds' local counsel in the BNY Mellon litigation. Neither thought, or had reason to believe, that fees of 4 to 5.5 percent to local counsel were unreasonable in view of what they had been told and what they understood about Chargois's role in the case. The testimony at deposition included the following:

	Robert Lieff	**pages**
Q	And did he (Chargois) fit the description of what you think of as a "local counsel" based on what you knew about him?	58-59

A 2013-15? It was so represented, yes, by Garrett Bradley that he was local counsel, and it sounded like he was taking care of the situation in Arkansas as typically a local counsel would do. So that was my understanding.

Q Did you have any concerns about—beyond the financial aspect which appears to you to be non-problematic—that there might be other issues, ethical issues or client issues or class issues that the ERISA attorneys might suffer? 60-61

A Again, it's hard to answer this without reference to the timeframe. Back in the early days when I first heard about it, as I now know it was April 2013 I believe, and then again 2015, I didn't think too much about it because we had a very similar situation in the companion—I call it the companion but in the Bank of New York we had local counsel in Ohio dealing with the fund. I thought this was local counsel in Arkansas dealing with the fund.

Q Special Master: And the Labaton folks at no time told you anything more about the larger context of the relationship with Mr. Chargois? 66

A No.

Q Special Master: What was your understanding of what the relationship was between Mr. Chargois and Labaton? 67

A I thought he was local counsel for Labaton in this particular case. I assumed dealing with the Arkansas Fund because that's what local counsel will do. That was my understanding.

Q Special Master: We don't know how to characterize this, and we are asking all the witnesses in their experience if they know how to characterize it. Mr. Sucharow did characterize it as a forwarding fee arrangement. 78-80

A I saw that. I would say, first of all, we have to be talking about class actions only.

Q Special Master: Yes.

A That's what we are talking about. And in the context of class actions there is no such thing as a referral lawyer. You cannot refer a class action and be compensated. It just—it's not the way it works . . . Likewise, forwarding fee. I don't know what that means. But if it is a referral fee, there is no such thing in class actions.

Local counsel there definitely is, and there is no question about the use of local counsel, but you choose local counsel in each of your cases. Now that does not mean that if it is not the same counsel—I know, for example, we have represented funds in Ohio, and we have a law firm in Columbus, Ohio chosen by the attorney general, Mike DeWine, of Ohio, and he wants them to be our local counsel, and they work, and they get paid, and we get time records.

Q Special Master: But what was the basis of your firm's agreement to share in the payment then? 92-93

A Lead counsel said to the other two class firms that we have a local counsel in Arkansas helping us in Arkansas—later saying I think they were doing a good job or something—and that we have to compensate them for what they have done.
Q Special Master: And based on that—
A —I agreed
Q Special Master: —you agreed.
A Very common to do this, yeah.

Q Special Master: Did 5.5 percent seem to be a large number for a local counsel of 75 million dollars? 93-94
A I would have to look up, for example, what our local counsel in the Bank of New York case got, what percentage. I do not remember. But it does not seem on the face of it to be unusual. I think perhaps our local counsel got something similar to that, but I would have too look it up.
Q Special Master: Would it depend on how much work the local counsel did? Among other factors.
A Yes. In the Bank of New York case it was easy because we had their time records. And **we were lead counsel**. **When I am lead counsel, I look at this differently than when I am not lead counsel.** [Emphasis supplied].

Daniel Chiplock

Q Did you recall any conversation aside from the name Damon Chargois that referenced a referring attorney? 101-103
A No. And with respect to Mr. Chargois, he was never characterized to me as a referring attorney.
Q Special Master: How was he characterized to you?
A Local counsel. He was always described to me as—when I say "always" I mean there were maybe 5 or 6 emails during the life of this case on this issue that I can recall. He was always described as local counsel.
Q And what does that mean to you that someone is local counsel?
A Well, it can mean a few things. I can tell you what I thought it must have meant here. What I assumed when I was told local counsel—and I think there was another email from Garrett that said he played an important role in the case. So it was—it is not at all atypical in cases like this for an institutional plaintiff, especially a pension fund, to want there to be like a hometown lawyer or a local counsel who is close to them, who is involved in the case somehow. I can give you an example. In the BNY Mellon case we represented Ohio pension plans. The Ohio AG selected an Ohio counsel to work with us, we had no—we had no input into that. And that was their choice. They wanted to have what they called a local counsel, even though the case was pending in New York, to interface with them, to give them comfort, to respond to questions and maybe do, you know, one—run some things down on the local side on the client-facing side, you know, while we as national counsel are involved in the main part of the litigation. So we had local counsel in the BNY Mellon case who actually did a fair amount of interaction with the Ohio AG's office.

Q Do you recall what the payment terms were for Mr. Chargois? 106
A Ultimately?
Q Both historically and ultimately in State Street?
A Well, I think initially how it was characterized to us was that he was local counsel and that he was entitled to twenty percent of Labaton's fee, and the proposal by Garrett was that it instead be taken off the top of whatever the total fee turns out to be. So those were the terms as they were described in 2013 and then in 2015 and then again in 2016 I think. And then ultimately he was paid five and a half percent of the total fee.

Q Special Master: At 2015 when you became cognizant that there was going to be a fee—a payment to Mr. Chargois—were you advised by anyone at Labaton of the history with Mr. Chargois—Labaton's history with Mr. Chargois? 109-110
A No. What was always represented to us—at least the communications that I am copied on and that I took part in—were that he was a local counsel, and sometimes he is described as local counsel for Arkansas or Arkansas local counsel. And sometimes he is described as local counsel for Labaton.
Q Special Master: And what did you take that to mean?
A As I said earlier, I assumed—you know, between those representations and between this representation here (indicating) that he performed some kind of an important role, that he was some type of local counsel of the type that I described a little while ago.

Q But, in any event, you do recall being informed as to the arrangement, even though it was not solid or completely defined, between Labaton and consequently by the customer class firms and Mr. Chargois. 115-116
A I recall his—the description of him that was offered in that email which was I think the—the words they used were that he assisted Labaton in matters pertaining to Arkansas.
Q And did you interpret that description of he assisted as meaning he took an actual active role in those cases?
A I actually assumed that, yes. That it was some kind of a role, some kind of an assistance offered by a local counsel. And for that assumption I based it on my own experience, my own recent experience in the BNY Mellon case.

Dated: April 5, 2018

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

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 ROBERT L. LIEFF

Robert L. Lieff, Esq., declares as follows, pursuant to 28 U.S.C. § 1746:

1. I am Of Counsel to the law firm of Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser"). I submit this declaration to further elaborate on my prior testimony concerning my understanding and belief as to the role of "local counsel" in the State Street litigation and the attorney's fees allocated to local counsel.

2. During my deposition I was asked about the size of the fee for Mr. Chargois, local counsel to Labaton and to the Arkansas Fund.

> Q. Special Master: did 5.5% seem to be a large number for a local counsel of seventy-five million dollars?
>
> A. I would have to look up, for example, what our local counsel in the Bank of New York case got, what percentage. I do not remember. But it does not seem on the face of it to be unusual. I think perhaps our local counsel got something similar to that, but I would have to look it up.
>
> Q. Special Master: Would it depend on how much work the local counsel did? Among other factors.
>
> A. Yes. In the Bank of New York case it was easy because we had their time records. And we were lead counsel. When I am lead counsel I look at this differently than when I am not lead counsel. (93:14-94:9)

3. I have now confirmed that my recollection regarding the magnitude of the fee to our local counsel in the BNY Mellon case was correct. The court in the BNY Mellon case awarded fees to our local counsel of $3,154,291, or just slightly less than 4% of the total attorney fees awarded in the case.

4. I would have been aware of the fee request in the BNY Mellon case and the amount we were requesting for local counsel by no later than mid-2015 and of the actual award by the court as of September 2015. So I would clearly have had that in mind contemporaneously with the discussions in 2015 and again in 2016 regarding the fee allocation for local counsel in the State Street case.

5. In my answer to the Special Master's question, I remarked that I look at these types of matters, fee allocations among class counsel, differently when I am lead counsel. When Lieff Cabraser is lead counsel in class litigation we assume responsibility for assessing the contributions of subordinate counsel in connection with allocation of fees among counsel and with respect to fee requests. As lead counsel we do our best to make sure that fees are fairly allocated according to the value of the contributions to the class and that no fee allocation or fee request is unreasonable, either because it is too large or too small. Invariably we also share the information regarding fee allocation or fee requests with the court-appointed class representative(s) to obtain their approval of the allocation or request.

6. The Labaton firm has extensive experience in class litigation, particularly in the securities field. They have served as lead or co-lead counsel in scores of class action cases. I had every reason to believe, and did believe, that they had engaged in the process of reviewing the work done by local counsel and the contributions of local counsel, and that they and their client, the Arkansas Fund, were of the view that the fee allocation to Chargois was fair and reasonable and fully supported by his contribution to the case.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 4, 2018.

Robert L. Lieff

1533142.1

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
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DECLARATION OF DANIEL P. CHIPLOCK

Daniel P. Chiplock, Esq., declares as follows, pursuant to 28 U.S.C. § 1746:

1. I am a partner with the law firm of Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser"). I submit this declaration to further elaborate on my prior testimony concerning my understanding and belief, at all times prior to September 2017, as to Chargois & Herron LLP's role as reputed "local counsel" in the State Street litigation, and the basis for that understanding and belief.

2. For my declaration, to avoid repetition, I specifically refer to and incorporate the Response by Lieff Cabraser Heimann & Bernstein LLP to [the] Special Master's September 7, 2017 Request for Supplemental Submission, dated November 3, 2017 ("the Supplemental Submission")[1], and the citations to the record therein.[2]

3. As detailed in the Supplemental Submission and my prior deposition testimony dated September 8, 2017 ("Sept. 8 Deposition"), in the few communications where Lieff Cabraser attorneys were copied or participated that concerned Damon Chargois, he was consistently referred to by attorneys outside of Lieff Cabraser as "local counsel" for Labaton Sucharow LLP ("Labaton") and/or the client, the Arkansas Teacher Retirement System ("ATRS").[3] *See* Exhibits A and B.

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[1] The Supplemental Submission is attached hereto as Exhibit A, for ease of reference.

[2] All emails referenced in the Supplemental Submission, in addition to several others relevant to the issue of Lieff Cabraser's mindset, are attached collectively as Exhibit B.

[3] The Ethical Report for Special Master Gerald E. Rosen by Prof. Stephen Gillers ("Ethical Report"), dated February 23, 2018, refers to an "original cost-sharing agreement" mentioning Mr. Chargois that purportedly was "circulated—but never executed—among Customer Class Counsel in 2011," but Lieff Cabraser has no record of its attorneys ever having received this document. *See* Ethical Report, p. 42 and n. 47. Indeed, the testimony cited in n. 47 of the Ethical Report appears to confirm that this document was not "circulated . . . among Customer Class Counsel" but instead was a draft that was circulated solely between Christopher Keller (of Labaton) and Garrett Bradley (of Thornton Law Firm). The first mention that Lieff Cabraser can find of Mr. Chargois in any communication involving Lieff Cabraser is the April 2013 email string described in paragraph 2 of the Supplemental Submission.

4. Lieff Cabraser's attorneys referred to Mr. Chargois in kind as "local counsel" in the handful of communications they exchanged with co-counsel about Mr. Chargois and in internal Lieff Cabraser communications. Co-counsel never corrected Lieff Cabraser's attorneys, nor suggested to Lieff Cabraser's attorneys that Mr. Chargois was anything other than "local counsel." *See* Exhibit B.

5. Lieff Cabraser was not lead counsel in the State Street litigation, and had no direct client relationship with ATRS. Indeed, the Lieff Cabraser attorneys did not interact with George Hopkins (the chief representative for ATRS in the litigation) at all during the State Street litigation, outside of the mediation sessions that Mr. Hopkins personally attended. Lieff Cabraser's attorneys also never spoke with Mr. Chargois to my knowledge, and had no interactions with him outside of a few group emails. For its understanding of Mr. Chargois' role and function in the State Street litigation, Lieff Cabraser accordingly relied on the representations by Labaton, who was lead counsel, and Mr. Garrett Bradley, who prior to the conclusion of the State Street litigation was Of Counsel to Labaton, and on Mr. Chargois' confirmations by email (copied to both Bob Lieff and myself) of his role as local counsel and his important role in the case. (For the latter, *see* Chargois' emails of April 25, 2013 [LBS025771] *and* July 8, 2016 [LCHB-0053544-45], contained in Exhibit B).

6. During the life of the State Street litigation, Lieff Cabraser had no visibility into any work being performed by Mr. Chargois. But this was not unusual for a local counsel working in tandem with a lead counsel, in my recent experience. In the BNY Mellon litigation (where Lieff Cabraser did serve as lead counsel), Lieff Cabraser worked with an Ohio-based local counsel for its Ohio-based public pension fund clients. That local counsel (who was selected by the Ohio Attorney General) communicated directly and virtually exclusively with Lieff Cabraser insofar as his work assignments were concerned. His work was focused primarily

on assisting Lieff Cabraser in guiding the Ohio pension fund clients through their responses to defendants' discovery requests, as well as helping to defend their depositions. This was but one distinct part of a very large and complex litigation effort (which involved taking more than 100 depositions overall, including scores of depositions of defendants and third parties all over the globe), which involved many law firms. Throughout this, the Ohio local counsel's principal focus remained serving the Ohio public pension funds' individual discovery and litigation needs (with some document review assignments as well). As such, he and his firm had very little (if any) contact with Lieff Cabraser's co-lead counsel in that case (Kessler Topaz Meltzer & Check LLP), and virtually none with the other law firms who were not serving in a co-lead capacity (which would have been analogous to Lieff Cabraser's position in the State Street litigation).

7. The total attorneys' fees awarded in the BNY Mellon litigation were $83,750,000, which equated to 25% of the $335 million settlement fund in that case. Ohio local counsel was ultimately awarded approximately 4% of the total fees by the court in that case, which was certainly within the range of fees commonly paid or awarded (in Lieff Cabraser's experience) to local counsel who have performed services for the class representatives or lead counsel and thus to the class as a whole.

8. The $335 million settlement in the BNY Mellon litigation was reached in principle by March 2015, and preliminarily approved in late April 2015. Notice to the class was sent shortly thereafter, and by then it was understood and communicated to class members that counsel would apply for approximately a 25% attorneys' fee. By the time the final settlement approval and fee petitions were filed in August 2015, the level of fee we would be requesting for Ohio local counsel in the BNY Mellon case was established – approximately 4%.

9. Accordingly, at about the same time that I was being apprised by co-counsel of Mr. Chargois' role as "local counsel" in the State Street litigation, and the contours of his fee

interest were being discussed, I was in the process of finalizing and requesting a proposed fee allocation in the BNY Mellon litigation that included a fee percentage for local counsel that was not substantially different from what was being discussed for Mr. Chargois. That proposed fee percentage did not strike me as outside of the norm for a local counsel such as Mr. Chargois had been described to me. Nor did I view it as unusual that I was not privy to the specific work Mr. Chargois had performed as local counsel; as stated above, the various non-lead counsel in BNY Mellon, to my knowledge, had little or no substantive direct contact with Ohio local counsel in that case.

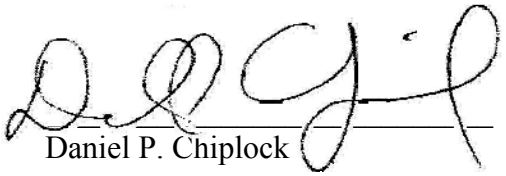
10. Based on lead counsel's descriptions, I understood during the State Street litigation that ATRS was gathering and producing a fairly substantial number of documents in response to defendant's requests. All told, according to lead counsel, ATRS produced more than 73,000 pages of documents,[4] an undertaking in which Lieff Cabraser was not directly involved. I also understood that prior to Lieff Cabraser being engaged as additional counsel for the proposed class, ATRS had spent substantial time investigating, with the assistance of its counsel, the underlying allegations against State Street (which were first made public by the October 2009 unsealing of a whistleblower lawsuit in California) before finally filing a lawsuit in 2011, and that this time period included one or more meetings with State Street representatives (none of which included my firm). It was my belief, informed both by (i) co-counsel's descriptions of Mr. Chargois as "local counsel" who was "assisting" Labaton in matters pertaining to ATRS and had performed "an important role" in the litigation, and (ii) my firm's recent experience in BNY Mellon, that Mr. Chargois had actually assisted and played an important role in these efforts. It was also my belief, for the same reasons, that Mr. Chargois' involvement in these efforts (and in

[4] *See* Decl. of Lawrence A. Sucharow, ¶ 97, Dkt. No. 104 (filed 9/15/16).

the litigation overall) was at ATRS' behest, and certainly (at a minimum) with its complete knowledge and consent. I assumed that ATRS and lead counsel in the State Street litigation regarded the proposed fee percentage for Mr. Chargois to be reasonable and justified by his value to the client, and therefore to the class, based on their knowledge of his work and contributions.

11. My belief during the 2015-2016 timeframe as to the apparent reasonableness of Mr. Chargois' fee interest as "local counsel" was further informed by historical experience at my firm. Over the years, for instance, Lieff Cabraser has been asked to serve as local counsel in a number of securities class actions. In some other types of class actions, including cases involving consumer protection statutes such as the Telephone Consumer Protection Act of 1991 ("TCPA"), Lieff Cabraser has requested counsel in the forum jurisdiction to act as our local counsel. In both circumstances, the local counsel (whether it is us or another firm) has often been offered the option of a fee arrangement predicated on lodestar or based on a percentage. When on a percentage basis, the fee has typically ranged from a low of 5% to a high of 10% of the total fees awarded in class cases. In the two most recent securities class cases in which Lieff Cabraser agreed to serve as local counsel, for instance, the fee share upon which Lieff Cabraser agreed at the outset with putative lead class counsel was 10% of the total fees awarded. While these cases have involved local counsel in the forum court, in contrast with Mr. Chargois' situation in the State Street litigation, this history comprises another baseline for commonly accepted percentage fee arrangements, in my experience, for local counsel in class litigation.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 5, 2018.



Daniel P. Chiplock

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
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RESPONSE BY LIEFF CABRASER HEIMANN & BERNSTEIN LLP TO SPECIAL MASTER'S SEPTEMBER 7, 2017 REQUEST FOR SUPPLEMENTAL SUBMISSION

Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser") respectfully provides this individual response ("Response") to the Special Master's September 7, 2017 Request for Supplemental Submission concerning "the circumstances of the monies paid to Attorney Damon Chargois in the State Street case for his role as a referring attorney and the implications of that payment and circumstances in addressing the charge of Judge Wolf in paragraph 2 of his March 8, 2017 Order."

1. At all times throughout the litigation of the State Street matter and up through August 11, 2017, Mr. Chargois was described and represented to Lieff Cabraser as "local counsel" for Labaton Sucharow LLP ("Labaton") and/or the client, the Arkansas Teacher Retirement System ("ATRS"). Mr. Chargois was never described to Lieff Cabraser as a "referring," "forwarding," or any other kind of counsel by Labaton or Garrett Bradley (who was a partner at Thornton Law Firm LLP ("Thornton") throughout the litigation and, starting in or about 2015, also of counsel at Labaton).

2. Specifically, on April 24, 2013 (when Mr. Chargois' role in the litigation as well as his proposed allocation of a portion of the class attorneys' fee was first broached), Mr. Chargois was described to Lieff Cabraser by Mr. Bradley as "local counsel who assists Labaton in matters involving [ATRS]." *See* LCHB-0053483.[1] In subsequent communications in 2015 and 2016, Mr. Chargois was described to Lieff Cabraser variously as the "[A]rkansas local" (LCHB-0053491), the "Arkansas firm" (LCHB-0053531), the "Arkansas component" (*id.*), and "the local attorney in this matter who has played an important role." (LCHB-0053542). *See also* Chiplock Dep. (Sept. 8, 2017) at 102:3-13; 109:19-110:18; 115:8-117:8; 118:9-22.

[1] Mr. Chiplock, who was the principal Lieff Cabraser attorney on the case, was apparently copied on this initial April 24, 2013 email and one or more responses to it, but did not recall receiving them and did not himself reply. *See* Chiplock Dep. (Sept. 8, 2017) at 68:4-24; *see also* LCHB-0053522, 0053538, 0053541.

3. Lieff Cabraser attorneys, on the subsequent handful of occasions when they referenced Mr. Chargois in written communications to attorneys at Labaton and Thornton—which almost exclusively was in the context of discussing attorney fee allocations—referred in kind to Mr. Chargois as the "local counsel," "Arkansas local," "local Arkansas counsel," or simply "Arkansas" counsel. *See, e.g.,* LCHB-0053493, 0053507, 0053513, 0053522, 0053531, 0053549.

4. The "Agreement of Fees" entered into on August 30, 2016, approximately two weeks prior to the submission of the final settlement and fee approval papers to the Court, similarly references Mr. Chargois as "Labaton Sucharow's local counsel." LCHB-0053552. The fee allocation charts circulated by Labaton after final settlement approval had been granted (in November 2016) also refer to Mr. Chargois as "Labaton's Local Counsel." *See* LCHB-0053553-56, 0053560, 0053567.

5. Lieff Cabraser understood Mr. Chargois' stated role as "local counsel" throughout the litigation to mean that he was assisting ATRS and Labaton in Arkansas, including by interfacing with the client and/or performing local client-sided tasks that were helpful to the litigation. This was the type of role with which Lieff Cabraser was generally familiar from prior experience—and was the type of role played by Ohio-based local counsel (for Ohio-based clients) in the BNY Mellon litigation (in which Lieff Cabraser was lead counsel). Lieff Cabraser assumed that Mr. Chargois' role as local counsel was being performed at the behest of (and with the consent of) ATRS. All of the foregoing was consistent with the descriptions offered to Lieff Cabraser by Labaton and Mr. Bradley of Mr. Chargois' status and role in the litigation. *See, e.g.,* Chiplock Dep. (Sept. 8, 2017) at 101:24-104:18; 109:19-111:9; 115:8-118:22.

6. Lieff Cabraser did not learn that Mr. Chargois (a) actually was not local counsel, (b) had performed no work in the State Street litigation, and (c) was not known to the client

representative for ATRS (George Hopkins), until after Mr. Hopkins (of ATRS) and Mr. Belfi (of Labaton) were deposed on September 5, 2017.

7. Had the Court ordered an accounting of all attorneys' fees and their planned allocation pursuant to Fed. R. Civ. P. 54, or had asked specific questions to that effect at the final approval hearing, Lieff Cabraser has (and had) no reason to believe that Mr. Chargois' allocation (along with all of the others') would not have been made known to the Court. At no time, ever, did Lieff Cabraser agree to "conceal" the existence of Mr. Chargois from anyone, including ERISA counsel, any clients, or the Court,[2] either before[3] or after the final approval hearing (including in the November 28, 2017 "clawback" letter which Lieff Cabraser did not draft and which, without Lieff Cabraser's input, did not divulge Mr. Chargois' identity or fee interest to ERISA counsel).[4]

Dated: November 3, 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

[2] *See, e.g.,* Chiplock Dep. (Sept. 8, 2017) at 100:7-101:23; 104:19-105:7; 108:19-109:7; 119:4-20; 140:4-141:10.

[3] Mr. Chiplock himself was not aware of Mr. Chargois when the original agreement memorializing a 9% fee allocation for ERISA counsel was signed in December 2013. *See* Chiplock Dep. (Sept. 8, 2017) at 120:19 – 121:15; *see also* LCHB-0053522, 0053538, 0053541. Mr. Lieff, for his part, did not recall Mr. Chargois' existence or stated role after the initial April 2013 email exchange until being reminded by Mr. Bradley in 2015 (and then again in 2016) of Mr. Chargois' putative status as local counsel. LCHB-0053531, 0053538.

[4] *See* Sucharow Dep. (Sept. 1, 2017) at 20:22-23:15; 26:1-24. Lieff Cabraser was not copied on the email correspondence concerning the clawback letter in which it was stated there was "no need for ERISA to see Damon's split." *Id*.

EXHIBIT B

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Chronological Index of Pertinent Emails/Communications[1]

Tab		
1	LCHB-0053483	4/25/13 email from Garrett Bradley of Thornton Law Firm to Robert Lieff, copying Daniel Chiplock and others regarding "the obligation to the local counsel who assists Labaton in matters involving the Arkansas Teachers Retirement System." Lieff replies that he is in "full agreement" with proposal to allocate 4 or 5% of awarded attorneys' fees to Damon Chargois.
2	LBS025771	4/25/13 email from Chargois to Bradley (copying Lieff, Chiplock and others) agreeing to the same proposal, thereby confirming the description of him as "local counsel" assisting Labaton Sucharow LLP ("Labaton").
3	LCHB-0053491-92	8/6/15 email from Bradley to Lieff, copying Michael Thornton, referring to Chargois as the "Arkansas local," with an implied fee amount of 5% (arising in the context of negotiating a fee allocation among class counsel).
4	LCHB-0053493-4	8/28/15 string containing email from Lieff to Bradley referring in kind to "Arkansas local counsel," with a provision for 5% of fees. (Also in the context of negotiating a fee allocation among class counsel.)
5	LCHB-0053507-12	8/28/15 exchange between Lieff and Chiplock referring to "Arkansas local" at 5%. (Again, part of the same allocation effort.)

[1] These documents are being transmitted electronically by separate sharefile.

Tab		
6	LCHB-0053513-14	8/28/15 string containing email from Bradley to Chiplock and others regarding fee allocation, indicating that the "Arkansas fee is still being negotiated," with prior emails referring multiple times to either "Arkansas," "Arkansas fee," or "local Arkansas counsel."
7	LCHB-0053522-23	8/30/15 email exchange between Chiplock and Bradley where Chiplock asks for copy of written agreement discussing "local Arkansas counsel" fee component. Bradley responds saying the "Arkansas component" was to "come off the top."
8	LCHB-0053531-32	8/30/15 string containing emails from (i) Chiplock to Bradley asking for a copy of the written agreement relating to Arkansas local; (ii) Lieff to Bradley saying he does not have a copy of the agreement; and (iii) Bradley to Lieff and to Chiplock saying that he re-sent it to Lieff previously and that he will send it again when he gets to his office.
9	LCHB-0053538-40	6/14/16 email from Chiplock to Lieff, forwarding a copy of 8/30/15 and 7/28/15 emails from Bradley to Lieff and Chiplock and Thornton, with the note "I don't know how you get around this." The 8/30/15 and 7/28/15 emails from Bradley to Lieff each forwarded a copy of the original April 2013 email exchange, describing Chargois as "local counsel."
10	LCHB-0053541	6/14/16 email from Chiplock to Lieff indicating that he found the April 2013 email in archives, and that he had no memory of it. Forwarding a copy of the April 2013 email to Lieff and inquiring how "local counsel's" fee is going to be calculated.
11	TLF-SST-057140	7/8/16 email from Bradley to Lieff, Chiplock and others (copying Chargois) describing Chargois as "the local attorney in this matter who has played an important role."

Tab		
12	LCHB-0053542	7/8/16 email from Chiplock to Lieff forwarding a copy of the preceding email, and inviting Lieff to respond.
13	LCHB-0053544-45	7/8/16 email string containing a response from Chargois to Sucharow, copying Lieff, Chiplock and others, confirming his agreement to 5.5% and effectively confirming the description of his role in Bradley's email of the same date.
14	LBS039936-37	7/8/16 string containing email from Lieff to Bradley, copying others, confirming Lieff Cabraser's agreement to "5.5[%] to Chargois."
15	LCHB-0053548-49	String containing 8/12/16 corrective email from Lieff to Bradley, correcting Lieff's prior communication to include a reference to "**local counsel."** (Emphasis in original).
16	LCHB-0053552	August 2016 written agreement concerning proposed allocation of attorneys' fees, referencing "Labaton Sucharow's local counsel."
17	LCHB-0053553-55	11/23/16 email from Nicole Zeiss of Labaton to Lieff, Chiplock and others referring to "Labaton's local counsel."
18	LCHB-0053560-62	11/23/16 email exchange between Chiplock and Lieff agreeing that figures for Lieff Cabraser look correct.
19	LCHB-0053567-69	11/23/16 email from Chiplock to Zeiss confirming that Lieff Cabraser's figures look correct.

EXHIBIT O

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 06/28/2018 10:35:31 AM

From = 02/06/17 **To** 06/28/18

STATE STREET - ARKANSAS TEACHERS

Matter Number: 3344-0002

Soft Costs Incurred

	Amount
In-House Copies	$407.20
Postage	$0.46
Print	$9,736.40
Telephone	$424.59
Total Soft Costs:	**$10,568.65**

Hard Costs Incurred

	Amount
Computer Research	$2,712.26
Deposition/Transcripts	$36,125.94
Electronic Database	$7,920.00
Federal Express/Messenger	$208.87
Professional Fees	$1,225,826.08
Travel	$57,353.31
Total Hard Costs:	**$1,330,146.46**
Total Matter Costs:	**$1,340,715.11**

EXHIBIT P

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: PETROBRAS SECURITIES LITIGATION	14-cv-9662 OPINION AND ORDER

JED S. RAKOFF, U.S.D.J.

The $3 billion settlement of this somewhat large securities class action is before the Court for final approval. The Settlement Agreement[1] comports with all legal requirements, and the objections to the settlement are without merit. But the nearly $300 million in attorneys' fees requested by plaintiffs' counsel needs to be reduced by roughly one-third.

Named plaintiffs Universities Superannuation Scheme Limited acting as sole corporate trustee for Universities Superannuation Scheme ("USS"), North Carolina Department of State Treasurer ("North Carolina"), and Employees' Retirement System of the State of Hawaii ("Hawaii") (collectively, "Class Representatives" or "Class Plaintiffs"), seek final approval of a proposed settlement agreement with defendants Petróleo Brasileiro S.A. ("Petrobras"), Petrobras Global Finance B.V., Petrobras America Inc. (collectively, the "Petrobras Defendants"), BB Securities Ltd., Citigroup Global Markets Inc., J.P. Morgan Securities LLC, Itaú

[1] Except where otherwise noted, all capitalized terms in this Opinion and Order have the same meanings as those assigned to them in the Stipulation of Settlement and Release. See Dkt. 767-1.

BBA USA Securities, Inc., Morgan Stanley & Co. LLC, HSBC Securities (USA) Inc., Mitsubishi UFJ Securities (USA), Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Standard Chartered Bank, Bank of China (Hong Kong) Limited, Banco Bradesco BBI S.A., Banca IMI S.p.A., Scotia Capital (USA) Inc. (collectively, the "Underwriter Defendants"), Almir Guilherme Barbassa, Jose Carlos Cosenza, Paulo Roberto Costa, Renato de Souza Duque, Guillherme de Oliveira Estrella, Maria das Graca Silva Foster, Jose Miranda Formigli Filho, José Sergio Gabrielli, Silvio Sinedino Pinheiro, Daniel Lima de Oliveira, José Raimundo Brandão Pereira, Sérvio Túlio da Rosa Tinoco, Paulo Jose Alves, Gustavo Tardin Barbosa, Alexandre Quintão Fernandes, Marcos Antonio Zacarias, Cornelis Franciscus Jozef Looman, Theodore M. Helms (collectively, the "Individual Defendants"), Banco Votorantim Nassau Branch, Santander Investment Securities Inc., Petrobras International Finance Company, and PricewaterhouseCoopers Auditores Independentes ("PwC Brazil").[2] See Memorandum of Law in Support of Class Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation ("Pl. Mem."), Dkt. 776. Contingent on approval of the settlement, counsel for Class Representatives, namely, Pomerantz LLP ("Pomerantz"), Labaton Sucharow LLP ("Labaton"), and Motley Rice LLC ("Motley

[2] Pursuant to the Stipulation of Settlement and Release, Dkt. 767-1, however, Paulo Roberto Costa and Renato de Souza Duque are not Released Parties, id. at 22.

Rice")[3] (collectively, "Class Counsel"), move for fees and costs, see Dkt. 791, as do four other law firms, namely, Wolf Popper LLP ("Wolf Popper"), Almeida Advogados ("Almeida"), Kahn, Swick & Foti, LLC ("KSF"), and Bernstein Litowitz Berger & Grossmann LLP ("BLBG"), who are counsel for plaintiffs in related individual actions, see Dkts. 777, 781, 784.

Six members of the class filed timely objections to either the settlement, the motion for fees and expenses, or both: William Thomas Haynes, as trustee for the W Thomas Haynes and Katherine Haynes Irrevocable Trust for the benefit of Sara L. Haynes ("Haynes"), see Objection of William Thomas Haynes ("Haynes Obj."), Dkt. 797; Spencer R. Bueno, see Objections of Spencer R. Bueno to Class Action Settlement ("Bueno Obj."), Dkt. 803; Julio A. Martinez and Sandra V. Bennun Serrano ("Martinez"), see Objection to Approval of Class Action ("Martinez Obj."), Dkt. 806; Mathis and Catherine Bishop ("Bishop"), see Objection to Proposed Settlement and Fee Application ("Bishop Obj."), Dkt. 811; Giulio Formenti on behalf of Renewable Carbon Corporation ("Formenti"), see Objection to the Petrobras Securities Litigation Case ("Formenti Obj."), Dkt. 812; and Richard and Emelina Gielata ("Gielata"), see Shareholder Objections to Proposed Settlement,

[3] Motley Rice is counsel for Union Asset Management Holding AG.

Plan of Allocation, Proof of Claim, Class Notice and Request for Attorneys' Fees ("Gielata Obj."), Dkt. 813.[4]

Class Plaintiffs, responding to the objections, argue that they are without merit. See Reply Memorandum of Law in Support of (1) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (2) Class Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Pl. Reply"), Dkt. 824.[5] Defendants concur as regards the Settlement Agreement, see Petrobras Defendants' and Underwriter Defendants' Reply in Support of Class Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation ("Def. Reply"), Dkt. 825; PricewaterhouseCoopers Auditores Independentes' Reply in Support of Class Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation, Dkt. 828, and

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[4] The Court is also in receipt of a letter from MaryAnne Lassegard who objects to the notice and settlement amount. See Letter dated June 5, 2018, Dkt. 832. This objection is untimely and Ms. Lassegard has not demonstrated standing to object. Id. Ms. Lassegard's objection is also without merit as Ms. Lassegard is incorrect that smaller shareholders will be disadvantaged by this Settlement compared with larger shareholders.

[5] Class Plaintiffs have also accused certain objectors of having improper motives including, in the case of Bueno and Gielata, allegedly seeking to extort personal payments through the device of frivolous appeals. See Pl. Reply at 4-14. As Class Plaintiffs do not currently seek any specific relief at the district court level, and the allegations of extortion, if true, will only become evident on appeal, the Court sees no need to reach these issues at this time.

take no position on the Plan of Allocation or Class Counsel's motion for fees and costs, see id.[6]

By way of brief background, on February 1, 2018, Class Plaintiffs moved, unopposed, for preliminary approval of a settlement agreement, see Dkt. 765, pursuant to the terms of which, the Petrobras Defendants would pay $2.95 billion and PwC Brazil would pay $50 million to the class in exchange for releases from all claims. See Stipulation of Settlement and Release, Dkt. 767-1; Amended Stipulation and Agreement of Settlement, Dkt. 767-10. On February 23, the Court held a preliminary approval hearing. See Transcript, Dkt. 773. On February 28, the Court granted Class Plaintiffs' motion for preliminary approval. See Order at 2, Dkt. 770. Thereafter, more than one million copies of the Class Notice were mailed to potential class members and a summary notice was published in major news publications worldwide. See Pl. Reply at 1.

On April 20, Class Plaintiffs moved for final approval of the proposed Settlement and Plan of Allocation and certification of the Settlement Class. See Dkt. 776. No institutional investor

[6] At the request of the Court, the Petrobras Defendants submitted a letter identifying time entries in Class Counsel's fee request warranting the Court's attention. See Letter from the Petrobras Defendants dated May 7, 2018 ("Def. Ltr.") at 2, Dkt. 793. Also at the Court's request, Class Counsel submitted a reply. See Letter on Behalf of Class Representatives dated May 18, 2018 ("Pl. Ltr."), Dkt. 814.

objected to the Settlement Agreement, Plan of Allocation, or proposed fee award and all but one of the institutional plaintiffs who had previously filed separate lawsuits but had not yet settled with defendants indicated their intention to remain members of the class and forego their individual claims. See Pl. Reply at 1-2.[7] On June 4, 2018, the Court held a settlement hearing at which objectors Haynes and Martinez appeared. See Transcript dated June 4, 2018 ("Tr."). After careful consideration of all the voluminous written filings and oral argument in this case, the Court hereby grants Class Plaintiffs' motion for final approval, finding that the Settlement Agreement and Plan of Allocation are fair, reasonable, adequate, and comport with all requirements of law. The Court also grants in full the motions of Wolf Popper, Almeida, and KSF for fees and costs, but only grants in part the motions of Class Counsel and BLBG for the same.

I. The Stipulation of Settlement and Plan of Allocation

[7] More than a dozen institutional investors filed separate, so-called "tag-along" actions based on the same basic allegations as the class complaint. Several have previously settled, and, with one exception, the remainder have decided to forgo their separate actions and, instead, receive their pro rata distributions as members of the class. The only separate institutional investor that has not so far indicated that it will, in effect, opt in to the settlement is Washington State Investment Board ("WSIB"). Counsel for that party and counsel for defendants should jointly call chambers by no later than July 2, 2018 to schedule the prompt trial of that remaining case.

This case grows out of a massive fraud, but whether defendants were responsible for the fraud or were themselves victims of the fraud was one of several hotly-contested issues that made the outcome of this case uncertain. The proposed settlement followed more than three years of litigation including, among other things, non-frivolous (though mostly unsuccessful) motions by defendants to dismiss plaintiffs' claims, defeat class certification, and obtain summary judgment in their favor, as well as extensive fact and expert discovery (including 68 depositions and review of more than 25 million pages of documents), preparations for trial, a substantial Second Circuit appeal, and a fully briefed petition for certiorari. See Pl. Mem. at 5-6. Familiarity with all these prior matters is here assumed.

The Settlement Amount equals approximately 22.3% of the likely recoverable damages suffered by the class (as estimated by Class Plaintiffs). See id. at 1. It represents, moreover, a 65% premium over the recoveries enjoyed by various individual plaintiffs (sophisticated institutional investors represented by experienced counsel) who have previously reached settlements with the Petrobras Defendants. Id. at 2. Furthermore, as mentioned, all but one of the remaining institutional plaintiffs have indicated their intention to remain class members and forgo their individual claims. See Pl. Reply at 1-2.

Under Federal Rule of Civil Procedure 23(e), the Court must approve a class action settlement before it can take effect. "A court may approve a class action settlement if it is fair, adequate, and reasonable, and not a product of collusion." Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 116 (2d Cir. 2005) (internal quotations omitted). In making its determination, the Court can take into account, inter alia, (1) the complexity, expense, and duration of the litigation; (2) the class's reaction to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through trial; (7) the defendants' ability to withstand a greater judgment; and (8) the range of reasonableness of the settlement fund in light of best possible recovery and all attendant litigation risks. See City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974). Furthermore if, as here, the "settlement class" is different from the litigation class or classes previously certified, the Court must now certify the settlement class, although certain Rule 23 considerations are not applicable in this context. See, e.g., Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 620 (1997) ("a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial").

Since, in preliminarily approving the proposed settlement, the Court tentatively concluded that all the forgoing standards for approval had been met, it makes sense to re-visit these preliminary conclusions chiefly in terms of the objections that have now been raised. Objectors here principally challenge (1) certification, (2) the sufficiency of the class notice, (3) the proposed cy pres recipient, and (4) the settlement amount. The Court reviews each of these objections in turn. (Several objectors also take issue with the fee award requested by Class Counsel; the Court addresses these latter objections in Part II, infra.)

A. Certification

Objectors argue that the proposed settlement class is overbroad, and that, accordingly, it fails to satisfy the requirements of Rule 23 that (1) the diverse groups and individuals within the class be adequately represented by the named plaintiffs, see Haynes Obj. at 3-8; Gielata Obj. at 1-8; Bueno Obj. at 6-9, and that (2) common issues of law and fact predominate over those issues subject only to individualized proof, see Haynes Obj. at 9-12.

(1) Adequate Representation

The proposed settlement agreement defines the Settlement Class as all persons who purchased Petrobras Securities in a transaction "that satisfies any of the following criteria: (i) any transaction in a Petrobras Security listed for trading on the New

York Stock Exchange ("NYSE"); (ii) any transaction in a Petrobras Security that cleared or settled through the Depository Trust Company's book-entry system; or (iii) any transaction in a Petrobras Security to which the United States securities laws apply, including as applicable pursuant to the Supreme Court's decision in Morrison v. National Australia Bank, 561 U.S. 247 (2010)." Stipulation of Settlement and Release ¶ 1(j), Dkt. 767-1. Haynes, Gielata, and Bueno purport to identify an intraclass conflict in this case between those persons whose purchases of Petrobras Securities are connected to the U.S. solely by virtue of the fact that their transactions were cleared or settled through the Depository Trust Company ("DTC") in New York (the "DTC claimants") and those persons whose purchases of Petrobras Securities are otherwise domestic under the operative case law (the "domestic claimants"), for example because their purchases took place on U.S. exchanges. According to Gielata, the DTC claimants are not properly part of the class at all and should be filtered out by a special master. See Gielata Obj. at 4 ("the problem here is not the 'classic' Amchem conflict necessitating subclasses. Rather, the structural conflict here is [] class member claimants versus claimants that cannot be part of the class because their claims are barred by Morrison"). According to Haynes, while the DTC claimants may properly be part of the class, the domestic claimants are entitled to separate representation given the

relative strength of their claims. See Haynes Obj. at 6. Haynes proposes that the Court certify two or three subclasses for purposes of negotiating a new settlement (or continuing the litigation). Id. at 8. Bueno similarly suggests that the Court appoint subclass representatives. See Bueno Obj. at 9.

What this boils down to as a practical matter is that certain claimants who would have been unable to join the litigation classes previously certified by the Court because of extraterritorial impediments are now included in the settlement class so that the defendants can buy "global peace." In the Second Circuit, plaintiffs are entitled to settle even entirely non-meritorious claims. See In re Am. Int'l Grp., Inc. Sec. Litig., ("AIG"), 689 F.3d 229, 243 (2d Cir. 2012) ("defendants in class action suits are entitled to settle claims pending against them on a class-wide basis even if a court believes that those claims may be meritless"). While "no class may be certified that contains members lacking Article III standing," class members who have suffered injuries-in-fact, as all putative members here have, can settle their claims "irrespective of whether their injuries are sufficient to sustain any cause of action." Denney v. Deutsche Bank AG, 443 F.3d 253, 264-5 (2d Cir. 2006).

Domesticity - although not a matter of Article III standing, see Morrison v. Nat'l Australia Bank, 561 U.S. 247, 254 (2010) ("to ask what conduct § 10(b) reaches is to ask what conduct §

10(b) prohibits, which is a merits question") - is an element of plaintiffs' securities fraud claims. If contested by defendants, domesticity must be proven by plaintiffs as part of their case-in-chief. But defendants here have waived any domesticity requirement for the purposes of settlement. See Def. Reply at 3. Accordingly, even though the Court previously found that the DTC claimants could not establish domesticity as a matter of law (but not because they lacked Article III standing), Gielata is wrong that the DTC claimants cannot be part of the settlement class (assuming that the other requirements of Rule 23 are met). See AIG, 689 F.3d at 237-44 (certifying a settlement class even though some or all of the class members could not satisfy the reliance element of their securities fraud claims); Sullivan v. DB Invs., Inc., 667 F.3d 273 (3d Cir. 2011) (certifying a settlement class even though some members of the class lacked statutory standing).

Another objector, Haynes, concedes this much. But, Haynes argues, while the "release of claims arising from foreign transactions might command some settlement value," the "proper valuation" of such "foreign" claims must be "tested through arms-length negotiation by separate representatives." Haynes Obj. at 7. Since Class Counsel were "obligated to advance the collective interests of the class," Haynes reasons, they were unable to represent the distinct interests of the subclasses. Id. (quotations omitted). As a result, Haynes concludes, Class Counsel

agreed to a proposed settlement agreement that unfairly diluted the recovery of domestic-purchasing class members (like Haynes).

Federal Rule of Civil Procedure 23(a)(4) requires that the representatives in a class action "fairly and adequately protect the interests of the class." The Rule, among other things, "serves to uncover conflicts of interest between named parties and the class they seek to represent." Amchem, 521 U.S. at 625. Representation is "adequate" where the class representatives have (1) an interest in vigorously pursuing the claims of the class and (2) no interests antagonistic to the interests of the other class members. In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig. ("Payment Card"), 827 F.3d 223, 231 (2d Cir. 2016), cert. denied sub nom. Photos Etc. Corp. v. Home Depot U.S.A., Inc., 137 S. Ct. 1374 (2017).

In the event a court identifies a "fundamental" conflict that goes "to the very heart of the litigation," Charron v. Wiener, 731 F.3d 241, 250 (2d Cir. 2013) (quotations omitted), the conflict must be addressed with a "structural assurance of fair and adequate representation for the diverse groups and individuals" among the class, Amchem, 521 U.S. at 627. "One common structural protection is division of the class into 'homogenous subclasses under Rule 23(c)(4)(B), with separate representation to eliminate conflicting interests of counsel.'" Payment Card, 827 F.3d at 231 (quoting Ortiz v. Fibreboard Corp., 527 U.S. 815, 856 (1999)). Where a court

certifies a class at the same time as it approves a settlement, these requirements - "designed to protect absentees by blocking unwarranted or overbroad class definitions" - "demand undiluted, even heightened, attention." Amchem, 521 U.S. at 620.

Two Second Circuit cases bear on the question of whether there is a fundamental conflict here between the DTC claimants and the domestic claimants such that a failure to divide the settlement class into subclasses makes it impossible for the Court to determine whether the interests of all class members were fairly and adequately represented. The first is In re Literary Works in Electronic Database Copyright Litigation ("Literary Works"), 654 F.3d 242 (2d Cir. 2011), a copyright dispute. In that case the proposed settlement agreement divided the class into three categories: "Category A" covered works that had been registered with the Copyright Office in time to be eligible for statutory damages and attorneys' fees under the Copyright Act; "Category B" covered works that had been registered with the Copyright Office but not in time to be eligible for statutory damages; and "Category C" covered all other works, none of which could be litigated for damages purposes until they were registered with the Copyright Office. Id. at 246. Category A and B claims were substantially stronger than Category C claims, but Category C claims comprised more than 99% of all claims held by the putative class. Id.

The proposed plan of allocation in Literary Works employed a damages formula that disadvantaged Category C claims in a variety of ways. Among other things, the formula paid each Category A or B claim substantially more than each Category C claim. Id. The settlement also capped defendants' total liability at $18 million and, if the total amount of all claims plus costs and fees exceeded $18 million, then the payout to Category C claims would be reduced pro rata until the total amount of all claims plus costs and fees reached $18 million. Id. Only if, after reducing Category C claims to zero, the payout due to Category A and B claims exceeded the available funds would a reduction be applied to the Category A and B claims. Id.

In these circumstances, the Second Circuit found that class members' "interests diverge[d] as to the distribution of" the recovery because "each category of claim is of different strength and therefore commands a different settlement value." Id. at 254. Although all parties in Literary Works agreed that Category C claims were the weakest, the court saw "no basis for assessing whether the discount applied to Category C's recovery appropriately reflect[ed] that weakness." Id. at 253. Nor could such a basis be established, the court concluded, "in the absence of independent representation." Id. After all, the named plaintiffs — who held combinations of claims – had "no incentive to maximize the recovery for Category-C only plaintiffs, whose

claims were lowest in settlement value but eclipsed all others in quantity." Id. at 254.

In the second relevant case, Payment Card, the settlement agreement split plaintiffs into two classes: a Rule 23(b)(3) class covering merchants who accepted Visa or MasterCard between 2004 and 2012 (the "(b)(3) class") and a Rule 23(b)(2) class covering merchants who accepted Visa or MasterCard from 2012 onwards (the "(b)(2) class"). See 827 F.3d at 229. The proposed plan of allocation awarded the (b)(3) class up to $7.25 billion in monetary relief and the (b)(2) class injunctive relief in the form of changes to various network rules. Id. While members of the (b)(3) class could opt out, members of the (b)(2) class could not. Id. Nonetheless, the same counsel represented both classes. Id. at 234. In these circumstances, the Second Circuit found that representation was inadequate because the (b)(3) class "would want to maximize the cash compensation for past harm" and the (b)(2) class "would want to maximize restraints on network rules to prevent harm in the future." Id. at 233. "Unitary representation of separate classes that claim distinct, competing, and conflicting relief create unacceptable incentives for counsel to trade benefits to one class for benefits to the other in order somehow to reach a settlement." Id. at 234.

The facts in the instant situation are dramatically different from the facts in Literary Works and Payment Card. To begin with,

here, unlike in Literary Works, all plaintiffs have been placed on an equal footing because defendants waived any domesticity challenge for settlement purposes.[8] And here, unlike in Payment Card,[9] where the same lawyers sought to represent two settlement classes with starkly distinct interests, both the DTC claimants and domestic claimants in this case suffered the same injury and are receiving the same relief. Moreover, there are no claimants here who have not yet been injured, i.e. there is a closed universe of potential claimants.

Additionally, here, unlike in Literary Works,[10] the parties provide an explanation for why the weaker claims are being treated

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[8] In Literary Works, the proposed plan of allocation divided plaintiffs' claims into three sub-groups, with those eligible for statutory damages receiving greater relief than those not eligible for statutory damages. 654 F. 3d at 246.

[9] In Payment Card, the Second Circuit examined the settlement's substance for evidence of prejudice and found that "the bargain that was struck between relief and release on behalf of absent class members [was] so unreasonable that it evidences inadequate representation." 827 F.3d at 236. The problem was that merchants in the (b)(2) class that accept American Express or operate in states that prohibit surcharging would gain "no appreciable benefit from the settlement" and merchants that began business after July 20, 2021 would gain "no benefit at all." Id. at 238. Thus, in exchange for nothing, "class counsel forced these merchants to release virtually any claims they would ever have against the defendants." Id. No such problem exists here, where, at worst, recoveries of the domestic claimants are very slightly diluted because the Plan of Allocation does not include a process for differentiating between their claims and the claims of weaker claimants (and awarding the latter a lesser amount).

[10] In Literary Works, the Second Circuit said it could "discern no reason, and authors and publishers offer none" for why the Category

equally to the stronger ones: the substantial administrative costs of differentiating between the comparatively small number of DTC claimants and the overwhelming majority of domestic claimants.[11] See Supplemental Declaration of Niki L. Mendoza Regarding Class Notice, Exclusion Requests, Objections, and Claims Received to Date ("Mendoza Decl.") ¶¶ 17-19, Exhibit G, Declaration of Emma Gilmore in Support of Class Plaintiffs' Reply Memorandum of Law, Dkt. 827 (affirming that "it would be costly to require transaction-by-transaction determinations of whether" DTC claims otherwise complied with Morrison and that such analysis would be "time-consuming" and potentially "delay the administration of

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C claimants should bear all the losses if the amount of total claims exceeded the settlement cap. 654 F.3d at 254. "That only one category of claim was targeted for this penalty without credible justification," the court reasoned, "strongly suggests a lack of adequate representation for those class members who hold only claims in this category." Id.

[11] Class Plaintiffs estimate that DTC claimants make up about 2% of the class as defined in the stipulation. See Tr. at 7. This is, they argue, because most of the noteholders whose purchases cleared through DTC in New York were domestic within the meaning of Morrison for other reasons having to do with, for example, the location of the buyers or sellers or the location of the brokers. See Pl. Reply at 17. Although Class Plaintiffs' evidence on this point is not conclusive, objectors provide no alternative calculations supporting their contention that the percentage is higher than 2%. Additionally, were the Court to adopt objectors' proposal, no one contests that the claims administrator would have to undertake an analysis of each transaction and that such a process would be both timely and costly, detracting from the recovery of the Settlement Class and delaying distribution. Id. at 20.

claims and distribution of funds"). Lending credence to Class Plaintiffs' explanation is the fact that not one institutional investor has joined Haynes in his objection and Haynes himself has at most a couple hundred dollars at stake. See Tr. at 17:3 (St. John) (estimating Haynes' expected recovery at $66).[12]

Further still, each of the three named plaintiffs in this case are represented by separate counsel, and two of those three named plaintiffs, Hawaii and North Carolina, have exclusively domestic claims, while USS has both domestic and non-domestic claims. In other words, Hawaii and North Carolina are the sort of domestic-only class representatives that Haynes and Bueno ask the Court to appoint. Both were involved in the settlement negotiations and neither objected to the equal treatment of the DTC claimants, even though these institutional investors have orders-of-magnitude more money on the line than Bueno or Haynes and have no plausible reason to agree to disadvantageous settlement terms. See Tr. at 18:12-20 (Dubbs) (explaining that all of Hawaii's transactions were "domestic" per the Court's prior order, that Hawaii was actively engaged in the settlement negotiations, and that Hawaii is "satisfied with the result"). Objectors, for their part, provide no explanation as to why Hawaii or North Carolina would agree to

[12] Moreover, the Court notes that defendants "would not have agreed to the Settlement Amount without the inclusion of all the Settlement Class Members as defined." Def. Reply at 7.

a settlement that unfairly diluted their expected recovery. Indeed, counsel for these Representatives, while also representing the class as a whole, have a fiduciary duty to their individual clients to ensure that the Agreement and Plan advance their clients' interests. Accordingly, the Court finds that there is insufficient evidence of prejudice here to warrant the appointment of subclass representatives. See Literary Works at 252 (in evaluating the adequacy of representation a Court may "examine a settlement's substance for evidence of prejudice to the interests of a subset of plaintiffs").

(2) Predominance

Haynes also argues that the presence of the DTC claimants in the class definition means that the proposed class fails to meet the predominance requirement of Rule 23(b)(3). See Haynes Obj. at 9. The problem, according to Haynes, is that domesticity is an individual question requiring class members to present evidence that varies from member to member (including, e.g., facts concerning the formation of contracts, placement of purchase orders, and exchange of money). Id. Haynes faults plaintiffs for failing to put forth "class-wide evidence" of domesticity, which, Haynes argues, is needed to "prevent the fact-finder from 'having to look at every class member's transaction documents to determine who did and who did not have a valid claim.'" Haynes Obj. at 10 (quoting In re Petrobras Sec., 862 F.3d 250, 274 (2d Cir. 2017)).

But the predominance requirement differs between trial and settlement. See AIG, 689 F.3d at 241. That, as noted above, is because "with a settlement class, the manageability concerns posed by numerous individual questions [] disappear." Id. After all, the proposal is "that there be no trial." Amchem, 521 U.S. at 620. Although a Court must still consider whether the class is "cohesive," all plaintiffs here claim injury by reason of the same conduct, defendants' purported misrepresentations and omissions are common to all, plaintiffs' proof of intent would not differ between class members, and all class members have suffered an identical kind of injury. See Green v. Wolf Corp., 406 F.2d 291, 299-301 (2d Cir. 1968).[13] Accordingly, while a class including DTC claimants and domestic claimants might have created manageability problems or other challenges at trial, here, in the settlement context, such concerns are irrelevant. As domesticity is the only issue objectors contend poses a problem in this regard, the Court finds that common issues predominate and that Rule 23(b)(3) is satisfied for purposes of settlement.[14]

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[13] Moreover, the Second Circuit has previously held in this very case that, even in the trial context, after weighing the relationship between common and individual questions, the district court might yet "determine that any variation across plaintiffs" when it comes to domesticity on balance were "insufficient to defeat predominance." In re Petrobras Sec., 862 F.3d at 274 n.27.

[14] The Court approves the Plan of Allocation for the same reasons set forth above, finding that it is fair, reasonable, and adequate.

B. Class Notice

Gielata argues that the Class Notice is deficient because it fails to disclose three categories of materially relevant information: (1) the percentage of the Settlement Fund apportioned to American Depository Shares ("ADS"); (2) an explanation of why a release is given to the underwriter defendants despite their failure to contribute to the Settlement Amount; and (3) the compensation due to the claims administrator. See Gielata Obj. at 9-10. Gielata seeks supplemental notice and objects to the compensation of the claims administrator to the extent that it exceeds 1% of the Settlement Fund ($30 million). Id.

As regards the percentage of the Settlement Fund apportioned to ADS, the Plan of Allocation discloses how that percentage will be calculated and Gielata cites no case law for the proposition that such notice is deficient where it does not include break-downs of expected payouts.

As regards the Underwriter Defendants' contribution (or lack thereof) to the Settlement Fund, there is no requirement that the Notice disclose the rationale behind the release. See O'Brien v. Nat'l Prop. Analysts Partners, 739 F. Supp. 896, 902 (S.D.N.Y. 1990). Moreover, it is permissible for an issuer to provide to the underwriters that it indemnifies a release in a settlement without requiring a contribution from those underwriters. And, as the Court knows from its familiarity with the underlying case, the

plaintiffs' case against the underwriters was materially weaker than its case against the Petrobras Defendants and PwC Brazil.

As regards the claims administrator, that administrator, the Garden City Group, disclosed at the hearing (at the Court's direction) that it will in no event be paid 1% or more of the settlement fund and that its compensation is capped at $19 million. See Tr. at 22. Accordingly, the Court finds that the disclosure in this case was sufficient (and that the compensation of the claims administrator is reasonable).[15]

C. Cy Pres Award

Haynes and Bueno object to the cy pres recipient designated in the proposed settlement agreement. See Haynes Obj. at 8-9; Bueno Obj. at 4. As mentioned at the hearing, see Tr., the Court will permit further briefing on this issue, as appropriate, if and when the question becomes ripe for consideration, and the Court retains jurisdiction for that purpose.

D. Settlement Amount

Giulio Pieter Formenti, on behalf of Renewable Carbon Corp. ("RCC"), objects to the size of the settlement, arguing that a "fair" settlement for investors would be "the full value of the loss realized," or $12.40 per share. See Formenti Obj. at 2. RCC,

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[15] Bueno also argues that the Notice was deficient because, inter alia, the Plan of Allocation was not provided on the notice website and Class Plaintiffs have concealed the damages estimate provided by their expert. These arguments are without factual basis.

however, lacks standing to make this objection. RCC sold all of its Petrobras Securities on July 31, 2013, more than a year before the first alleged corrective disclosure in this case on October 16, 2014. See id. at 8 (showing that RCC sold its 90,200 shares of Petrobras on July 31, 2013). Moreover, as previously noted, any recovery in this case was far from a certainty, given the substantial defenses that were raised.

Bueno also objects to the settlement amount as part of a "kitchen-sink" brief that purports to identify inequities relating to at least a dozen aspects of the proposed settlement. See Bueno Obj. at 2-12. But as regards the settlement amount, Bueno argues only that Class Plaintiffs overstate the risks of proceeding to trial, see id. at 6, and that certain market analysts had expected settlement figures of between $5 billion and $10 billion, see id. at 2 n.1. Bueno does not weigh the other Grinnell factors, or consider the fact that the settlement amount represents a 65% premium over the settlements reached by institutional plaintiffs in the previously-settled individual actions. Indeed, the small number of objectors, their minor stakes in the settlement, and the size of the premium strongly suggest that the settlement amount is fair, adequate, and reasonable.

E. Other Objections

Bueno also objects to the Plan of Allocation as an "improper claimant fund-sharing scheme," id. at 9-11, that is "inappropriate

to the extent that silent class members receive nothing and class members who submit claims do not receive anything approaching their actual damages," id. at 10. But the only relevant authority cited by Bueno for this proposition is entirely inapposite. See Eisen v. Carlisle & Jacquelin, 479 F.2d 1005, 1018 (2d Cir. 1973), vacated, 417 U.S. 156 (1974) (finding "fluid recovery" an "illegal" solution to manageability problems).[16] Among other things, the proposed settlement here requires proof of claim and the Plan of Allocation sets forth estimated distributions per share and per note before fees and expenses.

Martinez objects to the settlement's release of unknown claims, its failure to take into account "damages due to emotional stress," its failure to stipulate or disclose the "value" of the net settlement fund, and the payment of Class Counsel prior to the Court's determining what amount "was actually paid in cash to the class." See Martinez Obj. at 1-3.

Martinez cites no authority for his arguments. Indeed, the Court is of the view that the notice was sufficient and the Settlement is highly beneficial to Martinez. If Martinez remains a member of the class, Martinez will enjoy a recovery 65% larger per share than that enjoyed by numerous institutional plaintiffs

[16] In Eisen, "the cost of obtaining proofs of claim by individual members of the class and processing such claims was such as to make it clear that the amounts payable to individual claimants would be so low as to be negligible." 479 F.2d at 1017.

who spent large sums of money affirmatively litigating their same claims against defendants. Moreover, it is worth noting that, even taking the allegations in plaintiffs' complaints as fact, only a portion of the losses suffered by Petrobras shareholders in recent years are attributable to defendants' fraud. Losses incurred due to economic and political factors cannot be recovered through class action litigation. Finally, Martinez's objection to the timing of payment of counsel is discussed below.

II. Plaintiffs' Motions for Attorneys' Fees and Costs

Bueno objects to the compensatory award requested by the Class Representatives, and Bueno, the Bishops, Martinez, Gielata, and Haynes object to the fee award requested by Class Counsel. Wolf Popper, Almeida, KSF, and BLBG also move, without opposition or objection, for their fees and costs. The Court considers each request in turn.

A. Class Representatives

Class Representatives seek, pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), an award of $400,000 for expenses incurred directly relating to their representation of the class. See Memorandum of Law in Support of Class Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Fee Mem.") at 1, Dkt. 787.

Bueno argues that there is no way for the Court to calculate the reasonableness of the amount as plaintiffs have not provided

a break-down. See Bueno Obj. at 12. But each Representative has provided sworn statements detailing the work performed, the people who performed it, and the time expended. See Dkts. 789-12-14. The Representatives also calculated estimated hourly rates. Id. The work performed by named plaintiffs was beneficial to the class and included reviewing drafts of the complaints, responding to defendants' interrogatories and document requests, producing responsive documents, providing oversight of the mediation and settlement process, authorizing the settlements, and reviewing drafts of the settlements before they were filed with the Court. See Corrected Decl. of Jeremy A. Lieberman ¶¶ 449-53, Dkt. 789. Lead plaintiff USS's representatives, for example, attended every substantive hearing and mediation session, and reviewed the vast majority of significant filings. See Fee Mem. at 25. USS also conducted at least 70 telephonic and in-person meetings with Class Counsel. Id.

When selecting the Class Representatives, the Court explicitly sought out representatives prepared to be highly engaged in the litigation. From its own review, the Court is more than satisfied that this expectation has been fully met. Accordingly, the Court finds that the requested awards are fair and reasonable.

B. Class Counsel

Class Counsel seeks a fee award of $284.4 million and reimbursement of $14,515,235.24 in litigation expenses.

Haynes, Gielata, Bueno, the Bishops, and Martinez object. Haynes argues (1) that Class Counsel's lodestar is substantially overstated, (2) that a multiplier of 1.78 stands at the outer limit of what the Court should allow, and that, accordingly, (3) class counsel's fee request should be reduced to $90.3 million or 3% of the $3 billion fund. See Haynes Obj. at 12-25. Gielata argues that (1) no lodestar multiplier is warranted in this case, (2) Class Counsel's lodestar is vastly inflated, (3) public policy disfavors a $285 million fee award, and (4) a fee award of 2% or $60 million would be appropriate. See Gielata Obj. at 10-20. Bueno argues that Class Counsel's fee request is excessive. See Bueno Obj. at 13. The Bishops argue that Class Counsel's fee award should be cut in half. See Bishop Obj. at 1. And Martinez argues that the Court should not award attorney's fees as a percentage of the Settlement Amount. See Martinez Obj. at 2.[17]

Under controlling law, "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his

[17] As noted, defendants, at the Court's request, submitted a letter on May 7, 2018 assessing the reasonableness of Class Counsel's fee application, and flagging for the Court's consideration, inter alia, the rates charged by more than 100 staff attorneys and project attorneys, the rates charged for translation work, and specific instances where counsel's time sheets do not support the amount of time billed. See Def. Ltr. at 2-3.

client is entitled to a reasonable attorney's fee from the fund as a whole." Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980). "The rationale for the doctrine is an equitable one: it prevents unjust enrichment of those benefitting from a lawsuit without contributing to its cost." Goldberger v. Integrated Res., Inc., 209 F.3d 43, 47 (2d Cir. 2000). Fee awards also "serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons," and therefore "to discourage future misconduct of a similar nature." In re FLAG Telecom Holdings, Ltd. Sec. Litig., No. 02 Civ. 3400, 2010 WL 4537550, at *23 (S.D.N.Y. Nov. 8, 2010).

At the same time, counsel are not entitled to reap a windfall. See Goldberger, 209 F.3d at 49; Grinnell, 495 F.2d at 469. To that end, the Court must consider the reasonableness of the fee award in light of (1) the time and labor expended; (2) the magnitude and complexities of the litigation; (3) the risks of the litigation; (4) the quality of counsel's representation; (5) the requested fee in relation to the settlement; and (6) public policy. Id. at 50 (citing Union Carbide, 724 F. Supp. at 163). In considering these factors, Class Counsel's "lodestar" - i.e., what its work would have cost if billed at ordinary hourly rates - "remains useful as a baseline." Id.

(1) The Lodestar

Class Counsel states a lodestar of $158,923,426.50. This amount comprises over $110 million "billed" by Pomerantz contract and staff attorneys and over $27 million "billed" by Pomerantz partners and associates.[18] It also includes over $10 million "billed" by Labaton lawyers and $1.8 million "billed" by Motley Rice lawyers.

Rather than go to the added, considerable expense of appointing a Special Master, the Court asked the Petrobras Defendants to review the time sheets of Class Counsel and to identify issues meriting the Court's close attention. See Transcript dated February 23, 2018 at 34-35, Dkt. 773. Although somewhat unusual, the Court took this step because of defendants' intimate knowledge of various aspects of the case, and the Court's confidence was rewarded by the highly professional way in which defendants' counsel undertook their Court-directed task.

Among other things, defendants identified a series of specific instances where counsel's time sheets did not support the amount of time billed. For example, defendants' highlighted entries for one project attorney who billed 23 consecutive billable

[18] Nonetheless, it is well to keep in mind that cases like this one are always handled on a contingent fee basis, so that plaintiffs' counsel never do, in fact, bill the class on an hourly basis. Plaintiffs' counsel's real profit is the difference between what they pay their attorneys and staff on a salaried basis and what they receive in their fee award, and to this extent the "lodestar" is a somewhat artificial measure, though still useful as a check.

days for reading news articles on Petrobras - on most days for exactly 8.0 or 9.0 hours per day - totaling approximately 185 hours. Id. at 7. In another instance, a project attorney spent seven consecutive days reviewing the Consolidated Third Amended Class Action Complaint for at least 48 hours of total time after the Complaint had been filed. Id. Yet another project attorney billed eight hours per day at $450 per hour listing only "office closed" as the work description. Id.

While Class Plaintiffs did not necessarily concede the dubiousness of these and other charges questioned by defendants, they did voluntarily remove a number of them (such as the project attorney time billed while the office was "closed"), reducing their total lodestar from $159,496,169.50 to the above-mentioned $158,923,426.50. See Pl. Ltr. at 29. At the same time, Class Plaintiffs strenuously defended as justified and appropriate certain other charges identified by defendants. See id. In the end the Court, having undertaken its own personal review of the time sheets, concludes that the more global reductions described below, together with the aforementioned reductions agreed to by plaintiffs' counsel, sufficiently account for any sporadic and idiosyncratic overcharging that may have occurred.

Gielata argues that Pomerantz's billing rates for staff and contract attorneys are excessive and that such rates should be capped at a maximum of $200 per hour. See Gielata Obj. at 18-20.

Gielata further argues that the Court should reduce the number of reimbursable hours billed by these attorneys by 20% because their work focused on document review. Id. at 19.

Haynes argues that the $27,857,241.50 charged by 27 foreign project associates should be billed at-cost as an expense, see Decl. of Anna St. John ¶ 5, Dkt. 800 (listing the contract attorneys admitted only in Brazil and their amounts billed). According to Haynes, an attorney must be at least capable of being admitted pro hac vice in this Court in order to recover fees for legal services. See Haynes Obj. at 13-14 (citing Spanos v. Skouras, 364 F.2d 161, 168 (2d Cir. 1966) (en banc) and In re One Infant Child, No. 12 Civ. 7797, 2014 WL 704037, at *5 (S.D.N.Y. Feb. 20, 2014), rev'd sub nom. Souratgar v. Lee Jen Fair, 818 F.3d 72 (2d Cir. 2016) (denying reimbursement for legal services by a foreign attorney not admitted to practice in the United States)). Haynes further argues that the rates for contract attorneys should be reduced to $75 per hour and that the Court should sanction Class Counsel for overinflating their lodestar by applying a further 20% reduction. Id. at 18.

In evaluating these and other objections, the Court has spent a considerable amount of time personally reviewing the billing documentation submitted by plaintiffs' counsel, as well as the objections and responses pertaining thereto. The various reductions made below reflect not only that review, but also the

Court's familiarity from various other cases with appropriate billing rates and time allocations.

As regards the time billed by 27 foreign attorneys, Class Counsel do not address the case law cited by Haynes or identify cases supporting their position. Moreover, it would be improper to charge the class U.S.-attorney rates for this work. Accordingly, the full amount billed by these individuals must be deducted from Class Counsel's lodestar (approximately $27,569,829).[19] However, Class Counsel may add to their reimbursement request the actual costs they incurred compensating these attorneys.

As regards the amounts billed by staff and contract attorneys in this action (approximately $89,410,520.50 at Pomerantz, $6,375,370 at Labaton, and $1,180,333 at Motley Rice), see Def. Ltr. at 10,[20] the Court agrees with objectors that a reduction is appropriate to account for the considerable time spent by these attorneys on low level document review. However, given the legal

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[19] This figure takes into account the fact that Pomerantz, in adjusting its original lodestar, already subtracted around $287,412.50 from the time billed by these attorneys. See Decl. of Anna St. John ¶ 5, Dkt. 800.

[20] Whereas the Petrobras Defendants calculated a staff and project attorney lodestar for Motley Rice of $1,201,798, see Dkt. 793 at 10, the lower figure cited above takes into account the fact that Motley Rice withdrew certain time entries, reducing this amount by at least $21,465. Similarly, the figure for Pomerantz represents the firm's revised lodestar, $116,980,349.50, see Pl. Ltr. at Ex. A, less the amount billed by individuals not admitted to practice law in the United States, $27,569,829.

experience, language skills, and status of these attorneys,[21] the Court disagrees with Gielata and Haynes that their rates should be capped at or below $200. A more appropriate reduction is the one suggested by Gielata of 20%.

As regards the amounts billed by these attorneys for translating documents, however, a further reduction is required. While Class Counsel appropriately used attorneys to perform certain translation work in this case, such work is not appropriately billed at rates of between $325 and $625 per hour. Accordingly, these amounts (approximately $10 million at Pomerantz, $4,162,555 at Labaton, $752,783 at Motley Rice)[22] must be reduced by a further 50%.

Applying all the foregoing adjustments, and "rounding up" the figures in counsel's favor, the Court calculates an adjusted

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[21] For example, some of these attorneys received health insurance and an opportunity to participate in the firm's 401(k) program.

[22] $13,174,549 of Pomerantz's original lodestar is attributable solely to translation work performed by staff and project attorneys. See Def. Ltr. at 6. This figure, however, is both over- and under-inclusive. It is over-inclusive because it counts the time "billed" by non-U.S. attorneys, which the Court determined should be subtracted in its entirety. It is under-inclusive because it does not count the substantial amount of time "block billed" by Pomerantz lawyers for multiple tasks, including translation work. Indeed, the total time attributable in whole or in part to translation is more than $35 million and, subtracting non-U.S. attorney time, around $25 million. Nonetheless, this figure is still considerably over-inclusive. Accordingly, the Court adopts $10 million as a reasonable estimate of the amount of time Pomerantz billed (in its remaining lodestar) for translation work.

lodestar of $104.8 million, consisting of $96.0 million at Pomerantz, $7.5 million at Labaton, and $1.3 million at Motley Rice.

(2) The Multiplier

"[T]here is a strong presumption that the lodestar is sufficient," Perdue v. Kenny A., 559 U.S. 542, 546 (2010), without an enhancement multiplier. The fee applicant bears "the burden of proving that an enhancement is necessary." Id. at 553.

Gielata contends that no multiplier is warranted in this case because the risk of non-recovery was practically nonexistent, and Class Counsel's representation was unexceptional. See Gielata Obj. 11-16. Haynes concedes that a multiplier is warranted but argues that no more than the requested 1.78 multiplier is appropriate. See Haynes Obj. at 19-23. Anticipating a possible lodestar reduction, Class Counsel argues that even at "$104,461,062 [the] requested multiplier would be 2.7, well within the range of acceptable multipliers in this Circuit." Pl. Ltr. at 29. Accordingly, Class counsel contend, the Court should honor the ex ante fee agreement executed by Class Counsel with USS and award $284.5 million. See Fee Mem. at 17-21.

As an initial matter, the Court finds that there was, as previously mentioned, sufficient risk at both the motion to dismiss phase and the motion for summary judgment phase to warrant a multiplier. Additionally, the Court finds that Class Counsel's

performance was in many respects exceptional, with the result that, as noted, the class is poised to enjoy a substantially larger per share recovery than the recovery enjoyed by numerous large and sophisticated plaintiffs who separately settled their claims. It also bears mentioning, however, that this case involved fraud allegations that were previously widely reported and heavily investigated by the authorities in Brazil, so that much of the work that might otherwise have been required of plaintiffs' counsel had already been done, and done in a way that enhanced plaintiffs' bargaining position. As for the fact that plaintiffs negotiated, at the outset of the case, a particular fee arrangement with a particular client, this is at best just one factor to be weighed in assessing, after settlement has been reached, the full set of intervening events that have occurred and that provide a much better indication of what was the value of the attorneys' work to the class as a whole than any before-the-fact private agreement reached with an individual plaintiff.

Indeed, one purpose of the lodestar check is to ensure that even an arms-length fee agreement reached between class counsel and class representatives does not result in a harvest of fees at the expense of the class. As Class Counsel's adjusted lodestar is $104.8 million (and Class Counsel likely spent far, far less than this compensating its attorneys), the Court believes that the original 1.78 multiplier requested by Class Counsel is sufficient

to adequately account for the risks undertaken and the results achieved. Additional compensation above this amount would represent a windfall to Class Counsel, who were highly incentivized to heavily litigate this huge case regardless of the expected fee award.

It is important to also remember that we are dealing here, not just with percentages, billable rates, and multipliers, but with very large amounts of money in absolute terms that plaintiffs' counsel will be receiving under any analysis. Accordingly, the Court grants Class Counsel's motion in part and awards fees in the amount of $186.5 million - consisting of $170,880,000 to Pomerantz, $13,350,000 to Labaton, and $2,314,000 to Motley Rice - or roughly two-thirds of what was sought. The Court also awards costs in the amount of $14,515,235.24, plus whatever amount Class Counsel paid to employ the 27 foreign contract attorneys mentioned above.

As regards the fee award, fifty percent is payable to counsel immediately upon entry of final judgment. The other fifty percent shall be paid only after the distribution is completed. This schedule, which the Court has routinely employed in other cases, reflects that, on the one hand, counsel have spent a great deal of time and money to litigate this case and should not have to continue to shoulder the costs of funding this litigation any longer than necessary, but that, on the other hand, counsel should not be paid in full before their clients have received any of their

recovery, nor would it be helpful to eliminate an incentive for counsel to monitor the distribution agent and ensure that the settlement funds are distributed expeditiously. Dispensing half of counsel's fee award now and half later achieves both these purposes.[23]

C. Wolf Popper and Almeida

Wolf Popper and Almeida, counsel for the plaintiffs in Kaltman v. Petroleo Brasileiro S.A., No. 14 Civ. 9662 (S.D.N.Y.), seek an award of $307,629 in attorneys' fees and reimbursement of $1,219.66 in expenses. See Pl. Reply at 26-27. Class Counsel agrees to pay these fees out of its fee award. Id. As regards Wolf Popper's reimbursement request (which includes costs for filing fees, publishing the PSLRA notice, and online research) Class Counsel states that it is reasonable and the Petrobras Defendants state that counsel made a substantial contribution to the settlement outcome for the Settlement Class. Accordingly, the Court grants Wolf Popper's and Almeida's motions in full.

D. KSF

KSF seeks $589,915.50 in attorneys' fees and reimbursement of $2,650 in expenses. Id. at 27. Class Counsel agrees to pay the requested fees from its fee award. As regards KSF's expense request

[23] As noted earlier, Martinez objects to the immediate payment of counsel's legal fees. While it is not clear what timing objector has in mind or exactly what his rationales are, this resolution more than addresses any legitimate concerns he might have.

(which includes primarily transcript and court reporter costs), Class Counsel represents that KSF's work was performed with proper diligence and the Petrobras Defendants state that KSF made a substantial contribution to the class. Accordingly, the Court grants KSF's motion in full.

E. BLBG

BLBG seeks $2,114,085 in attorneys' fees and reimbursement of expenses in the amount of $1,146,873 for work performed and expenses incurred in relation to the prosecution of its claims on behalf of plaintiffs in four related cases: Hartford Mutual Funds, Inc. v. Petroleo Brasileiro S.A., No. 15 Civ. 9182 (S.D.N.Y.); Massachusetts Mutual Life Insurance Co. v. Petroleo Brasileiro S.A., No. 15 Civ. 9243 (S.D.N.Y.); Pacific Funds, et. al v. Petroleo Brasileiro S.A., No. 16 Civ. 2013 (S.D.N.Y.); and The Prudential Insurance Co. v. Petroleo Brasileiro S.A., No. 16 Civ. 7192 (S.D.N.Y.). See Application of Bernstein Litowitz Berger & Grossmann LLP for Reimbursement of Attorneys' Fee and Litigation Expenses ("BLBG Mem."), Dkt. 785.

BLBG does not seek an award equal to its lodestar but rather wishes that its adjusted lodestar be recognized by the Court and allocated at Class Counsel's discretion. See BLBG Mem. at 5. Class Counsel offers, with this caveat, to pay BLBG's fees out of its own fee award. See Pl. Reply at 29.

As regards BLBG's reimbursement request, Class Counsel "observe[s] that $256,867.35 of the requested expenses [are] attributable to the retention of the Direct Action Plaintiffs' loss causation/damages expert," who submitted a report that, Class Counsel asserts, was not beneficial to the Settlement Class. See id. Indeed, Class Counsel argues that the report was, in fact, detrimental to the Class and that reimbursement of this expense should be denied. See id. at 30.

The balance of BLBG's expense request consists of $616,745.70 for external ESI vendors, $192,400 for a financial consultant, $21,371.91 for travel, working meals, and transportation, $18,810.09 for legal research services, $17,842.96 for court reporting, transcripts, court fees, and service of process, $17,333.34 for mediation fees, and $5,502.38 for telephone costs, postage, and delivery costs. See Dkt. 786-28.

While BLBG persuasively argues that many of its efforts substantially aided the class and that the inclusion of the four above-mentioned plaintiffs in the settlement was a material term to the Settlement Agreement, a contention that neither defendants nor objectors dispute, see BLBG Mem. at 18, BLBG fails to show that its disbursements for mediation costs and expert costs advanced the interests of the class.[24] When these plaintiffs

[24] BLBG does not even seek to explain why or how the mediation benefited the class. See BLBG Mem. at 20.

decided to pursue individual actions rather than join the class, they accepted the risk that expense incurred by their counsel for efforts that did not redound to the benefit of the class (for whatever reason) would not be reimbursed by the class in the event that they later chose to opt-in to a class-wide settlement. Accordingly, the Court awards fees to BLBG in an amount to be determined by Class Counsel to be paid out of Class Counsel's fee award, but costs to BLBG in the amount of only $872,673.04 to be paid out of the Settlement Fund.

III. Conclusion

For the reasons stated above, and in the Court's preliminary approval of the settlement, the Court finds that the Settlement Agreement and Plan of Allocation are fair, reasonable, adequate, and otherwise in compliance with all applicable legal standards. Accordingly, the Court grants the motion of Class Plaintiffs for certification of the Settlement Class and for final approval of the Settlement Agreement and Plan of Allocation.

The Court also grants in part Class Counsel's motion for fees and costs, awarding in fees $300,000 to USS, $50,000 to North Carolina, $50,000 to Hawaii, $170,880,000 to Pomerantz, $13,350,000 to Labaton, and $2,314,000 to Motley Rice, and $14,515,235.24 plus the costs expended by Pomerantz on 27 foreign contract attorneys to Class Counsel in costs.

The Court also grants in part the motion of BLBG, awarding BLBG fees in an amount to be determined by Class Counsel to be paid from Class Counsel's fee award and $872,673.04 in costs to be paid from the Settlement Fund; grants in full Wolf Popper's motion, awarding Wolf Popper $107,629 in fees to be paid from Class Counsel's fee award and $1,219.66 in costs to be paid from the Settlement Fund; grants in full Almeida's motion, awarding Almeida $200,000 in fees to be paid from Class Counsel's fee award; and grants in full KSF's motion, awarding KSF $589,915.50 in fees to be paid from Class Counsel's fee award and $2,650.59 in costs to be paid from the Settlement Fund. As regards the fee awards, as noted above, counsel are to be paid 50% of the amounts due upon entry of final judgment and the remaining amounts after the settlement funds have been fully distributed to the class.

The Clerk is instructed to enter Final Judgment in accordance with the preceding paragraph, to close docket entry numbers 777, 781, 784, and 791, and to close the case. The Court will, however, retain jurisdiction over any further disputes arising in connection with the implementation of the Settlement or the payment of fees and costs.

SO ORDERED.

Dated: New York, NY
June 22, 2018

JED S. RAKOFF, U.S.D.J.

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 MOTION FOR CLARIFICATION

This Motion is hereby ALLOWED and the Master's proposed is hereby ADOPTED.
Wolf, D.J.
June 29, 2018

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 MOTION TO IMPOUND ONE EXHIBIT TO THE DECLARATION OF STEVEN E. FINEMAN IN SUPPORT OF THE RESPONSE AND OBJECTIONS OF LIEFF CABRASER HEIMANN & BERNSTEIN, LLP TO THE SPECIAL MASTER'S REPORT AND RECOMMENDATIONS

Pursuant to Fed. R. Civ. P. 7(b) and District of Massachusetts Local Rule 7.2, Lieff Cabraser Heimann & Bernstein LLP ("Lieff Cabraser") respectfully moves to impound one exhibit to the Declaration of Steven E. Fineman in Support of the Response and Objections of Lieff Cabraser Heimann & Bernstein, LLP to the Special Master's Report and Recommendations ("Fineman Declaration) – specifically: Exhibit A. As grounds for this motion, Lieff Cabraser states as follows:

1. Exhibit A (a) includes information that remains subject to a pending redaction request (as to another document or document(s)) in this matter (that request having not been objected to by the Special Master) and (b) is a document that is part of the record generated by the Special Master's investigation that was not attached as an exhibit to his Report and Recommendations. Accordingly, this document is subject to the protocol that the parties proposed for filing additional documents from the record. *See* ECF No. 259. As set forth in the referenced protocol, Lieff Cabraser seeks to file the unredacted version of this document under seal.

2. Accordingly, there is good cause pursuant to D. Mass. L.R. 7.2 to impound the unredacted version of Exhibit A.

3. Lieff Cabraser has filed via ECF a redacted version of Exhibit A and has indicated, by way of this motion, that an unredacted version is being filed under seal.

WHEREFORE, for the reasons set forth herein, Lieff Cabraser respectfully requests that the Court impound the unredacted version of Exhibit A.

Dated: June 29, 2018

Respectfully submitted,

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

By: */s/ Richard M. Heimann*
Richard M. Heimann (*pro hac vice*)
Attorney for Lieff Cabraser Heimann
& Bernstein, LLP

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

I caused other counsel in this case to be contacted in order to confer regarding the substance of this motion. Labaton Sucharow LLP does not oppose this motion. Keller Rohrback LLP takes no position on this motion. The other parties had not provided their positions as of the time these documents were prepared for filing.

/s/ Richard M. Heimann
Richard M. Heimann

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2018, I caused a true and correct copy of the above document to be served via ECF on counsel for all parties and counsel for the Special Master.

/s/ Richard M. Heimann
Richard M. Heimann