

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.

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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.

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

Plaintiffs,

No. 12-cv-11698-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

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**SPECIAL MASTER'S MOTION TO SEAL**  
**SPECIAL MASTER'S LETTER SUBMITTED TO COURT (UNDER SEAL)**

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

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

Dated: July 31, 2018

Respectfully submitted,

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

By his attorneys,

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

I hereby certify that this foregoing document was filed electronically on July 31, 2018 and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing ("NEF"). Paper copies were sent to any person identified in the NEF as a non-registered participant.

/s/ William F. Sinnott  
William F. Sinnott

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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

v. )

C.A. No. 11-10230-MLW )

STATE STREET BANK AND TRUST COMPANY, )  
Defendants. )

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

v. )

C.A. No. 11-12049-MLW )

STATE STREET BANK AND TRUST COMPANY, )  
Defendants. )

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

v. )

C.A. No. 12-11698-MLW )

STATE STREET BANK AND TRUST COMPANY, )  
Defendants. )

MEMORANDUM AND ORDER

WOLF, D.J.

July 31, 2018

The court has reviewed Customer Class Counsel's<sup>1</sup> Motion for Accounting, and Clarification that the Special Master's Role Has Concluded (Docket Nos. 302, 310) (the "Motion"), the Master's Response (Docket No. 377), and the Lawyers' Reply (Docket No. 397). Among other things, the Lawyers seek a ruling that the Master may not respond to the objections to his Report and Recommendation (Docket No. 357) (the "Report"). Neither the Lawyers nor the Master cited any cases concerning the court's authority to clarify or amend the Order appointing the Master to allow him to respond to objections to his Report.

The Report, with its Executive Summary, is more than 400 pages. The objections to it are comparably lengthy. The record to date, which is not complete, includes thousands of pages. Ordinarily in such matters the operation of an adversary process promotes well-informed decision-making.

When the Master was appointed the court took under advisement the Motion of the Competitive Enterprise Institute's Center for Class Action Fairness ("CCAF") to participate as a guardian ad litem for the class or, alternatively, as an amicus to the court. See Mar. 8, 2017 Order (Docket No. 172), ¶1. That request is now relevant to the Motion. Accordingly, it is hereby ORDERED that:

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<sup>1</sup> "Customer Class Counsel" are referred to in this Memorandum and Order as the "Lawyers."

1. The Lawyers are informed that the court may, if necessary, amend the Order appointing the Master to authorize him to respond to the objections to the Report and to address related issues. See Fed. R. Civ. P. 53(b)(4).

2. The Lawyers and the Master shall, by 12:00 noon on August 6, 2018, supplement their submissions to address the Court's authority to permit the Master to address objections to his Report and related issues.

3. CCAF shall, by 12:00 noon on August 6, 2018:

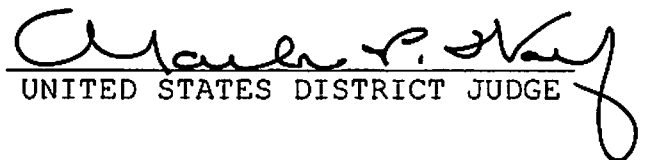
(a) State whether it remains willing and able to serve as a guardian ad litem or amicus;

(b) If so, the financial and other terms on which it proposes to serve;

(c) Supplement its motion to participate (Docket No. 126) to address the current circumstances of the case; and

(d) Respond to paragraph 2 hereinabove.

4. If CCAF still seeks a role in this case, any opposition to its request shall be filed by August 7, 2018.

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, )  
on behalf of itself and all others )  
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SAVINGS AND PROFIT SHARING PLAN, on )  
behalf of itself, and JAMES )  
PEHOUSHEK-STANGELAND and all others )  
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STATE STREET BANK AND TRUST COMPANY, )  
Defendants. )

C.A. No. 12-11698-MLW

MEMORANDUM AND ORDER

WOLF, D.J.

August 1, 2018

The court has received the Master's attached July 31, 2018 letter (Docket No. 411 under seal) (the "Letter"), stating that members and staff of the Arkansas legislature have contacted the

Master, through his staff, with requests for documents and information developed in his investigation that are not now part of the public Record.<sup>1</sup> The Letter states that the Master "referred" one such request "sent by an administrator at the Arkansas Bureau of Legislative Research," to the court. Id. at 1. The court, however, has not received any communication from the Arkansas Bureau of Legislative Research.

The Master moved to seal the Letter, but did not state any reasons for sealing that overcome the presumption of public access to judicial records and proceedings. See F.T.C. v. Standard Fin. Mgmt. Corp., 830 F.2d 414, 408 (1st Cir. 1987); June 28, 2018 Memorandum and Order (Docket No. 356) at 4-6. The court does not discern any reason the Letter should remain under seal.

In any event, the Master is not authorized to discuss or otherwise disclose information or documents developed in his investigation without an order of the court. Any request for such information or documents shall be made, in writing, to this court

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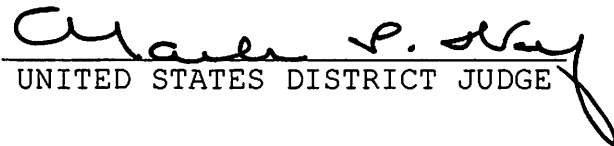
<sup>1</sup> The "Record" includes: "(a) the exhibits to the Master's Report and Recommendation; (b) any additional documents or information the Master wishes to add; (c) any additional documents or information previously provided to the Master that any party wishes to add; and (d) any other documents that the court requests." May 31, 2018 Order, ¶12. It does not include all information provided to the Master during his investigation. The Master states he intends to supplement the present Record. The court may request that additional documents be made part of the Record.

and will be filed for the public record of this case unless good cause is shown to justify impoundment and/or an ex parte submission.

Accordingly, it is hereby ORDERED that:

1. The July 31, 2018 letter (Docket No. 411 under seal) is UNSEALED.

2. The Master shall provide this Order to anyone requesting documents or information from him.

  
UNITED STATES DISTRICT JUDGE





July 31, 2018

Honorable Mark L. Wolf  
United States District Court  
John Moakley Courthouse  
1 Courthouse Way  
Boston, Massachusetts 02210

Re: *Special Master's Request to the Court for Guidance in Responding to Requests for Information from the State of Arkansas*

Dear Judge Wolf:

Over the past several days, the Special Master has received requests from the State of Arkansas Legislature seeking documents under seal. We referred the first request, sent by an administrator at the Arkansas Bureau of Legislative Research, which asked for Labaton's 8/11/17 *Response to Special Master's Supplemental Interrogatory* and Damon Chargois' 10/2/17 Deposition, to the offices of this Court. The Master's case manager also received the following email from Arkansas State representative Mark Lowery, Co-Chair of the Arkansas Joint Performance Review Committee:

From: Mark Lowery [mailto:markdlowery@mac.com]  
Sent: Wednesday, July 25, 2018 5:23 PM  
To: Sarah Nevins <snevins@jamsadr.com>  
Subject: Special Master work in State Street case

Ms. Nevins,

I am co-chair of the Arkansas Joint Performance Review Committee that has recently held a 3 hour hearing questioning Arkansas Teacher Retirement System director George Hopkins.

We are extremely concerned about references to "political favors" in Arkansas that brought about the relationship between ATRS, Labaton Sucharow and the Chargois/Herren law firm.

We are especially interested in the following excerpt from a Forbes article:  
Rosen was more circumspect in his report, only noting the questions raised by Chargois' 2014 e-mail discussing the "considerable favors" and "money spent" getting ATRS as a client.

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“The special master did not investigate further into the background facts alleged by Chargois in this email as to how the Chargois/Labaton/ATRS relationship was originated and developed,” the special master said in a footnote. “This investigation is beyond the scope of the Special Master’s assignment.”

Is it possible that Judge Rosen’s work in the case has come to a point where he would be able to discuss with me findings about the Chargois/Herren relationship with Labaton that may not have been included in the Special Master report to the Court?

If so please let me know how I could go about discussing with him or a representative any information that may assist us in our investigation going forward.

Rep. Mark Lowery  
District 39  
Cell phone - 501-837-5221

In response, the Special Master indicated he would seek guidance from the Court as to any appropriate response to these inquiries,<sup>1</sup> and he will not, of course, conduct discussions or provide sealed documents to legislative, law enforcement or other requestors without the express direction of the Court. However, he does wish to alert the Court to these inquiries as they implicate access to matters of public concern. He also wishes to advise the Court that, in addition to the documents filed with his Report, he will shortly be submitting to the Court a number of additional documents prompted by objections and other motions filed by Customer Class Counsel. These documents, which will be filed in response to the Court’s Order allowing an enlargement of the record, have a direct bearing upon the State of Arkansas inquiry, as well as to other critical issues in this phase of our case. As previously suggested by the Master, these documents should be of great utility to the Court in facilitating its review of the above-referenced objections filed by Customer Class Counsel.

We will await your guidance as to how we should respond to these inquiries.

Respectfully submitted,

William F. Sinnott  
Counsel to the Special Master

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<sup>1</sup> In response to this, the Special Master received an email today indicating as follows: “I have read parts of your report and recommendations with interest and our recent hearing focused on much of your findings. I hope you will be released by Judge Wolf to provide further insight to me as our committee continues its oversight authority.”

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

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

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 11-cv-10230 MLW

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

Plaintiffs,

v.

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

Defendants.

No. 11-cv-12049 MLW

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

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 12-cv-11698 MLW

**THE COMPETITIVE ENTERPRISE INSTITUTE'S CENTER FOR  
CLASS ACTION FAIRNESS'S MOTION FOR DISCLOSURE OF CERTAIN  
SEALED DOCUMENTS NECESSARY TO FULLY RESPOND TO THE  
COURT'S ORDER OF JULY 31, 2018 AND MEMORANDUM IN SUPPORT**

In accordance with Local Rule 7.1, and in response to the Court's Order dated July 31, 2018, ordering the Competitive Enterprise Institute's Center for Class Action Fairness ("CCAF") "to address the Court's authority to permit the Master to address objections to his report," Order (Dkt. 401), at 3, CCAF moves this Court for an order requiring the Special Master to provide its counsel with complete and unredacted copies of the following filings from this case: Dkts. 302, 310, 329, 345-1, 353, 377, 381 (Ex. A), 397, and any other sealed filings that, in the Special Master's view, pertain to Class Counsel's pending motion.

In accordance with Local Rule 7.1(a)(2), counsel for CCAF requested counsel's position on this motion via email in a good faith attempt to resolve or narrow the issue. All three Class Counsel firms (Labaton Sucharow LLP, Lief Cabraser Heimann & Bernstein, and the Thornton Law Firm) have advised they are opposed. Counsel for the Special Master, State Street Bank & Trust, McTigue Law LLP, Zuckerman Spaeder LLP, and Keller Rohrback L.L.P. advise they take no position on CCAF's motion. *See* Certificate of Compliance with Local Rule 7.1(a)(2) attached hereto.

#### **MEMORANDUM IN SUPPORT OF MOTION**

By order dated July 31, 2018, this Court ordered the Special Master, Class Counsel, and CCAF each "to address the Court's authority to permit the Master to address objections to his report and related issues," Order (Dkt. 401), at 3. This question pertains to Class Counsel's "Motion for Accounting, and Clarification that the Special Master's Role Has Concluded (Docket Nos. 302, 310) (the 'Motion'), the Master's Response (Docket No. 377), and the Lawyers' Reply (Docket No. 397)." Order at 2.

Consistent with the Order, CCAF hopes to assist the Court in addressing this question, but it is hobbled because it has access to *none* of the substantive filings the Court referenced. Only the two-paragraph motion itself is available (Dkt. 302), not the accompanying Memorandum, nor the Master's Response, nor the Lawyers' Reply.

Other filings that evidently pertain to the question are nearly entirely unavailable to CCAF. For example, the Special Master's letter of June 25, 2018 apparently pertains to whether the Master

may move “to remove Arkansas Teacher Retirement System as class representative and Labaton Sucharow, LLP as Lead Class Counsel.” Dkt. 264 (characterizing letter) at 2. However, the public version of the letter includes only the letterhead, salutations, and six pages of redactions concluding with “We await the Court’s guidance as to whether it wishes a full motion and briefing on these issues.” Public Version of June 25, 2018 Letter (Dkt. 345-2), at 6.

In order to meaningfully respond to the Court’s inquiry, CCAF must have access to the underlying Motion and other documents pertaining to it, including at least the following complete and unredacted filings:

- Dkt. 302 (Memorandum in support of Motion);
- Dkt. 310 (filing apparently related to the Motion);
- Dkt. 329 (June 21 letter from Special Master), redacted version at Dkt. 335;
- Dkt. 345-1 (June 25 letter from Special Master), redacted version at Dkt. 345-2;
- Dkt. 353 (Labaton response to June 25 letter), redacted version at Dkt. 353-1;
- Dkt. 377 (Special Master’s Response in opposition to Motion);
- Dkt. 381, Ex. A (July 6 letter from Special Master);
- Dkt. 397 (Class Counsel’s Reply in support of Motion).<sup>1</sup>

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<sup>1</sup> Separately, redacted yet sealed versions of the Memorandum (Dkt. 302) and Response (Dkt. 377) apparently exist. *See* Dkt. 301 at 3 (indicating redacted Memorandum filed with motion); Dkt. 394 at 2 (suggesting redacted Response filed July 5). These redacted versions ought to be unsealed, as should Class Counsel’s Reply (Dkt. 397). Class Counsel stated that the Memorandum in support of their Motion should “be kept under seal at least until this Court publicly releases a redacted version of the Master’s Submission.” Dkt. 301 at 2. It is unclear to CCAF why the Master’s Response was filed under seal (*see* Dkt. 376), but Class Counsel represented they “do not believe that the Proposed Reply contains information that needs to be sealed,” and moved for it to be sealed simply because it contains information from the sealed Response. Dkt. 394 at 2. Since the Special Master’s Report and exhibits have been publicly filed in redacted form, the redacted Memorandum, redacted Response, and Reply may likewise be unsealed.

Therefore, CCAF moves that the Court order the Special Master to provide its counsel with the above filings and any other sealed filings that, in the Special Master's view, pertain to the Motion. The Court should also order that any CCAF attorneys with access to sealed filings in this case execute the undertaking required by the protective order. Dkt. 61.

Dated: August 1, 2018

/s/ M. Frank Bednarz

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/s/ Theodore H. Frank

Theodore H. Frank (*pro hac vice*)  
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*Attorneys for Amicus Curiae  
Competitive Enterprise Institute  
Center for Class Action Fairness*

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)**

I certify that on August 1, 2018, CCAF emailed counsel for the parties and counsel for the Special Master in a good faith effort to narrow or resolve the issues raised in this motion. At the time of filing, all three Class Counsel firms (Labaton Sucharow LLP, Lief Cabraser Heimann & Bernstein, and the Thornton Law Firm) have advised they are opposed to CCAF's motion. Counsel for the Special Master, State Street Bank & Trust, McTigue Law LLP, Zuckerman Spaeder LLP, and Keller Rohrback L.L.P. advised they take no position on CCAF's motion at this time.

Dated: August 1, 2018

/s/ M. Frank Bednarz  
M. Frank Bednarz

**CERTIFICATE OF SERVICE**

I certify that on August 1, 2018, I served a copy of the forgoing on all counsel of record by filing a copy via the ECF system.

Dated: August 1, 2018

/s/ M. Frank Bednarz  
M. Frank Bednarz