

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MICHAEL L. FERGUSON, MYRL C.  
JEFFCOAT and DEBORAH SMITH,  
individually and as representatives of a class  
of similarly situated plan participants and  
beneficiaries, and on behalf of the DST  
SYSTEMS, INC. 401(K) PROFIT SHARING  
PLAN,

Plaintiffs,

v.

RUANE CUNNIFF & GOLDFARB INC.,  
DST SYSTEMS, INC., THE ADVISORY  
COMMITTEE OF THE DST SYSTEMS,  
INC. 401(K) PROFIT SHARING PLAN and  
THE COMPENSATION COMMITTEE OF  
THE BOARD OF DIRECTORS OF DST  
SYSTEMS, INC.,

Defendants.

Case No. 1:17-cv-06685-ALC-BCM

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MICHAEL L. FERGUSON, MYRL C.  
JEFFCOAT and DEBORAH SMITH,  
individually and as representatives of a class  
of similarly situated plan participants and  
beneficiaries, and on behalf of the DST  
SYSTEMS, INC. 401(K) PROFIT SHARING  
PLAN,

Plaintiffs,

v.

ROBERT D. GOLDFARB,

Defendant.

Case No. 1:20-cv-07092-ALC-BCM

**DECLARATION OF LAURIE RUBINOW**

I, Laurie Rubinow, hereby declare under penalty of perjury:

1. I am a Partner in Miller Shah LLP (“Miller Shah”), and I am a member of the bars of the State of New York and this Court. I am one of the attorneys who has worked on this matter since its inception and I have personal knowledge of the facts set forth herein.

2. Attached as Exhibit 1 is a true and correct copy of the Settlement Agreement<sup>1</sup> dated July 14, 2023, including all exhibits to the Settlement Agreement:

- **Exhibit A** – Long-Form Notice of Settlement and Plan of Allocation;
- **Exhibit B** – [Proposed] Final Approval Order;
- **Exhibit C** – [Proposed] Preliminary Approval Order;
- **Exhibit D** – Summary Notice of Settlement;
- **Exhibit E** – Former Participant Rollover Form;
- **Exhibit F** – Joint Stipulation of Settlement and Release of Claims to be filed in *Su v. Ruane, Cunniff & Goldfarb Inc., et al.*; and
- **Exhibit G** – List of Individuals Excluded from Settlement Class by virtue of service on fiduciary committees.

3. Plaintiffs have actively participated in the above litigation with their counsel, Miller Shah and Olivier & Schreiber, LLP (“Olivier & Schreiber” and with Miller Shah, “Class Counsel”). Among other things, Plaintiffs have assisted Class Counsel in investigating the Plan’s claims and drafting the respective complaints and other court pleadings, answered discovery requests and produced documents, provided information to Class Counsel to assist them in representing the interests of the Plan and its participants, and participated in strategy and settlement discussions with Class Counsel. In order to fulfill their duties to the Settlement Class,

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<sup>1</sup>Terms not defined herein shall have the same meaning as in the Settlement Agreement.

Plaintiffs have participated in regular conference calls with Class Counsel (approximately 50 since the outset of this litigation) to ensure they remained fully apprised of all developments in the litigation. Plaintiffs understand their duties and responsibilities as class representatives and representatives of the Plan, and they have no interests that are antagonistic to members of the Settlement Class or the Plan.

4. Based upon my review of the Plan's Form 5500s filed during the Class Period, there were at least 9,000 participants in the Plan throughout the Class Period. Plaintiffs each participated in the Plan during the Class Period, and Mr. Ferguson and Ms. Jeffcoat remain participants in the Plan. Ms. Smith ceased to be an active participant in the Plan on or about January 12, 2018, when she terminated her participation in the Plan and became a former participant.

5. Miller Shah is experienced in class action litigation, including in ERISA class actions, and has recovered in excess of \$1 billion on behalf of its clients in such cases. *See millershah.com*. James E. Miller and I have led Miller Shah's practice in the ERISA field over the past decade and we have served as lead counsel in a number of the most significant ERISA cases prosecuted in the United States on behalf of retirement plans and their participants, including the following: *Healthcare Strategies, Inc. v. ING Life Ins. & Annuity Co.*, No. 3:11-CV-282 (D. Conn.) (class action on behalf of retirement plans that proceeded to trial before the Honorable William G. Young and resulted in settlement valued at over \$400 million for the class of retirement plans in that case); *Phones Plus, Inc. v. Hartford Fin. Svc., Inc.*, No. 3:06-cv-01835 (D. Conn.) (class action settlement with value of over \$80 million on behalf of class of retirement plans); *Garthwait v. Eversource*, No. 3:20-cv-00902 (D. Conn.) (\$15 million settlement on behalf of retirement plan participants); *Boley v. Universal Health Servs., Inc.*, No.

2:20-cv-02644 (E.D. Pa.) (\$12.5 million settlement on behalf of retirement plan participants); *Golden Star, Inc. v. Mass Mutual Life Ins. Co.*, No. 3:11-cv-30235 (D. Mass.) (\$9.475 million class action settlement on behalf of class of retirement plans); *Butler National v. Union Central Life Ins. Co.*, No. 1:12-cv-177 (S.D. Ohio) (\$2.25 million cash payment to class of retirement plans and other relief to class valued at over \$15 million to class); *Terraza v. Safeway, Inc.*, No. 4:16-cv-03994 (N.D. Cal.) (settlement of \$8.5 million for class of plan participants pending approval); *In re LinkedIn ERISA Litig.*, 5:20-cv-05704-EJD (N.D. Cal.) (\$6.75 million settlement on behalf of retirement plan participants); *Jones v. Coca-Cola Consolidated, Inc.*, No. 3:20-cv-00988 (W.D.N.C.) (settlement of \$3.5 million for class of plan participants); *Barcenas v. Rush Univ. Med. Ctr.*, No. 1:22-cv-00366 (N.D. Ill.) (\$2.95 million settlement on behalf of retirement plan participants); *Allison v. L Brands, Inc.*, No. 2:20-cv-1060 (S.D. Ohio) (\$2.75 million settlement on behalf of retirement plan participants); *Butler National v. Union Central Life Ins. Co.*, No. 1:12-cv-177 (S.D. Ohio) (\$2.25 million common fund established for class of retirement plans and other relief to class valued at over \$15 million); *Blackmon v. Zachry Holdings, Inc.*, No. 5:20-cv-00988 (W.D. Tex.) (settlement of \$1.875 million for class of plan participants).

6. In addition, in 2020, Mr. Miller was recently named whistleblower lawyer of the year by Taxpayers Against Fraud (“TAF”), a well-respected non-profit association, for his work on behalf of the United States and certain states in recovering \$678 million in *U.S. ex rel. Bilotta v. Novartis Pharmaceuticals Corp.*, No. 1:11-cv-0071 (PGG), and \$54 million in *U.S. ex rel. Arnstein et al. v. Teva Pharmaceuticals et al.*, No. 1:13-cv-3702 (CM), both of which cases settled on the eve of trial in this judicial district before Judge Gardephe and Chief Judge McMahon, respectively, and demonstrate Miller Shah’s ability to handle exceptionally complex

litigation in a cooperative manner with the United States government—in those cases, with the Office of the U.S. Attorney for the Southern District of New York. Thus, it is beyond serious question that Miller Shah has the experience, resources, expertise and aptitude necessary to properly represent the interests of the Plan and the Class in this case.

7. Olivier & Schreiber is a law firm specializing in complex litigation, class actions and appeals in the areas of employment, ERISA, civil rights and consumer protection. Olivier & Schreiber represents individuals against large companies in individual as well as complex, class and collective action lawsuits, including ERISA class actions. Monique Olivier, who has led Olivier & Schreiber's representation of Plaintiffs in this action, has served as lead counsel in a number of class and representative actions, including the following: *Bernstein v. Virgin America, Inc.*, Case No. 13-cv-02277-JST (N.D. Cal.) (obtaining judgment in excess of \$77M in certified wage and hour case on behalf of flight attendants); *Terraza v. Safeway, Inc.*, No. 4:16-cv-03994 (N.D. Cal.) (settlement of \$8.5 million in ERISA action on behalf of plan participants); *Casteel v. Alaska Airlines, Inc.*, Case No. RG20052826 (Alameda County Superior Court) (representative employment action on behalf of flight attendants resulting in \$3M settlement to aggrieved employees and the state of California, and significant injunctive relief); *Bowerman v. Field Asset Services, Inc., et al.*, No. 13-CV-00057-WHO (N.D. Cal.) (obtained class certification and summary judgment, and obtained verdict and judgment for first ten class members in excess of \$7.5 million); *Ambrosio et al. v. Cogent Communications, Inc.*, Case No. 14-02182 RS (N.D. Cal.) (certified class action on behalf of California sales personnel for overtime violations, resulting in classwide settlement of \$3M); *Bell v. Delta Air Lines*, No. 13-cv-01199 YGR (N.D. Cal.) (class action on behalf of California airline cargo workers for overtime violations, resulting in classwide settlement of \$1.4M); *Kirola v. City and County of*

*San Francisco*, No. 14-17521 (9th Cir.) (secured reversal of judgment in favor of defendant following bench trial of this action seeking disability access to city services and programs); *Li v. A Perfect Day Franchise, Inc. et al.*, No. CV 10-01189 LHK (PSG) (N.D. Cal.) (class action on behalf of low wage workers subjected to massive wage violations, resulting in judgment over \$13M).

8. Class Counsel's representation of the Plan and Settlement Class began in 2016 with a comprehensive pre-filing investigation of the Plan's claims and underlying facts. On March 14, 2016, on behalf of Clive V. Cooper, a former employee of DST and participant in the Plan, Class Counsel filed *Cooper v. Ruane Cunniff & Goldfarb Inc.*, 1:16-cv-01900 (S.D.N.Y.), asserting breach of fiduciary duty claims against certain fiduciaries of the Plan related to overconcentration of the stock of Valeant Pharmaceuticals International Inc. n/k/a Bausch Health Companies Inc. ("Valeant" or "VRX") in the Plan's Profit Sharing Account ("PSP"), as well as other conduct. *Cooper* was filed as a putative class action on behalf of similarly-situated participants and beneficiaries in the Plan. The late Honorable William H. Pauley granted a motion to compel arbitration and Mr. Cooper appealed. Class Counsel briefed and argued the appeal, which resulted in a significant precedential decision by the United States Court of Appeals for the Second Circuit. *See Cooper v. Ruane Cunniff & Goldfarb Inc.*, 990 F.3d 173 (2d Cir. 2021). In 2017 and 2020, respectively, Class Counsel filed *Ferguson I* and *Ferguson II* on behalf of the Plan and Mr. Ferguson, Ms. Jeffcoat, and Ms. Smith, also former employees of DST and current and former participants in the Plan. Class Counsel's representation of the Plan and Settlement Class has spanned seven years and included vigorous litigation of several dispositive and other motions, multiple appeals, discovery, and comprehensive negotiations over the course of several years with all parties.

9. The parties engaged in a lengthy process in which they communicated their respective positions concerning the merits of Plaintiffs' claims and Defendants' defenses, as well as the Plan's alleged losses. These efforts included discussions with the Department of Labor and Arbitration Counsel regarding substantive and procedural issues related to these actions and the related proceedings. The parties engaged in numerous mediations with David Geronemus and Robert A. Meyer, two of the most well-respected mediators in the country, who have substantial experience with complex ERISA actions, over the course of several years. There has been no collusion or complicity of any kind in connection with the settlements reached in these cases or in any related negotiations.

10. As noted above, Class Counsel have significant experience in similar litigation, and are well-informed as to the specifics of these actions. Class Counsel's thorough investigation, which has spanned years, coupled with the significant document discovery conducted in *Cooper* and *Ferguson I*, has afforded Class Counsel a significant understanding of the merits of the claims asserted, the strength of Defendants' defenses, and the values of theoretical outcomes of the case. In addition, Class Counsel has engaged in extensive consultation with experts in assessing the claims, defenses and potential damages in connection with their negotiation of the settlements in these cases.

11. In connection with Plaintiffs' submission of the prior proposed settlement in 2021, Plaintiffs' expert calculated, based upon realistic and highly defensible concentration limits (assuming that the PSP should have been treated as a unitary investment fund that would have applied accepted principles of modern portfolio theory to establish its concentration limits), that the PSP would have been better off by \$86 million to \$97 million, if appropriate rebalancing had occurred. This represents the most realistic and appropriate measure of potential damages

recoverable from all parties with potential liability based upon these expert calculations. Although damages could potentially be calculated at higher levels (based upon higher concentration thresholds for single stocks in the Plan), it bears noting that such calculations could prove difficult to defend, based upon the full record in this case. Plaintiffs' experts also have evaluated the relative fault of the respective defendants and believe that the Settlement is fair and adequate under all of the circumstances.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of July, 2023 at Chester, CT.

/s/ Laurie Rubinow  
Laurie Rubinow



# EXHIBIT 1

**EXECUTION VERSION**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MICHAEL L. FERGUSON,  
MYRL C. JEFFCOAT, and DEBORAH SMITH,  
Individually and as Representatives of a Class of  
Similarly Situated Plan Participants and  
Beneficiaries, and on behalf of the DST  
SYSTEMS, INC. 401(K) PROFIT SHARING  
PLAN,

Plaintiffs,

v.

RUANE, CUNNIFF & GOLDFARB INC.; DST  
SYSTEMS, INC.; THE ADVISORY  
COMMITTEE OF THE DST SYSTEMS, INC.  
401(K) PROFIT SHARING PLAN; and THE  
COMPENSATION COMMITTEE OF THE  
BOARD OF DIRECTORS OF DST SYSTEMS,  
INC.,

Defendants.

CIVIL ACTION NO.  
1:17-cv-06685-ALC-BCM

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MICHAEL L. FERGUSON,  
MYRL C. JEFFCOAT, and DEBORAH SMITH,  
Individually and as Representatives of a Class of  
Similarly Situated Plan Participants and  
Beneficiaries, and on behalf of the DST  
SYSTEMS, INC. 401(K) PROFIT SHARING  
PLAN,

Plaintiffs,

v.

ROBERT D. GOLDFARB,

Defendant.

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CIVIL ACTION NO.  
1:20-cv-07092-ALC-BCM

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JULIE A. SU, Acting U.S. Secretary of Labor,  
Plaintiff,

CIVIL ACTION NO.  
1:19-cv-09302-ALC-BCM

v.

RUANE, CUNNIFF & GOLDFARB INC.; DST SYSTEMS, INC.; ROBERT D. GOLDFARB; THE ADVISORY COMMITTEE OF THE DST SYSTEMS, INC. 401(K) PROFIT SHARING PLAN; THE COMPENSATION COMMITTEE OF THE BOARD OF DIRECTORS OF DST SYSTEMS, INC.; KENNETH V. HAGER; RANDALL D. YOUNG; GREGG W. GIVENS; GERARD M. LAVIN; M. ELIZABETH SWEETMAN; DOUGLAS W. TAPP; GEORGE L. ARGYROS; LAWRENCE M. HIGBY; TRAVIS E. REED; LOWELL L. BRYAN; SAMUEL G. LISS; BRENT L. LAW; LYNN DORSEY BLEIL; CHARLES E. HALDEMAN, JR.; JEROME H. BAILEY; GARY D. FORSEE; and the DST SYSTEMS, INC. 401(K) PROFIT SHARING PLAN,

Defendants.

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### **SETTLEMENT AGREEMENT AND RELEASE**

This SETTLEMENT AGREEMENT and RELEASE (“Settlement Agreement”) is entered into by Named Plaintiffs, on behalf of themselves and on behalf of the Settlement Class and the Plan, on the one hand, and the Defendants, on the other hand, as well as Julie A. Su, Acting Secretary of Labor, United States Department of Labor, who enters into this Settlement Agreement with respect to certain provisions<sup>1</sup>; Arbitration Counsel, who enter into this Settlement Agreement with respect to certain provisions<sup>2</sup>; and *Canfield/Mendon* Counsel, who enters into this Settlement Agreement with respect to certain provisions.<sup>3</sup> Capitalized terms and phrases have the meanings provided in Section 1 below or as specified elsewhere in this Settlement Agreement.

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<sup>1</sup> These provisions are limited to Sections 1, 2, 3.2, 3.5, 3.7.1, 3.11, 4.3, 4.4, 4.7, 4.8, 4.9, 4.10, 8.1, 8.3, 8.7, 8.8, 9.1, 10.7, 11, 12.5, 12.8, 12.9, 12.10, 12.12, 13.1, 13.4, 14, and 15 (with the exception of Section 15.3, which does not apply to the Secretary).

<sup>2</sup> These provisions are limited to Sections 1, 2, 3, 4.7, 4.8, 6, 7, 8.1, 8.2, 8.5, 8.7, 8.8, 9, 10.7, 11, 12.7, 12.8, 12.10, 12.11, 13.1, 13.2, 13.6, 14, and 15.

<sup>3</sup> These provisions are limited to Sections 1, 2, 3, 4.9, 4.10, 6, 7, 8.1, 8.2, 8.6, 8.7, 8.8, 9, 10.7, 11, 13.1, 13.2, 13.6, 14, and 15 (with the exception of Section 15.3).

## 1. DEFINITIONS

As used in this Settlement Agreement and the Exhibits thereto, unless otherwise defined, the following terms have the meaning specified below:

- 1.1 “Action” means *Ferguson, et al. v. Ruane, Cunniff & Goldfarb Inc.*, Case No. 1:17-cv-06685 (S.D.N.Y.), Case No. 21-03066 (2d Cir.).
- 1.2 “Active Accounts” shall mean Class Members’ accounts in the Plan, which have a positive balance as of the date of the Preliminary Approval Order.
- 1.3 “Advisory Committee” means the Advisory Committee of the DST Systems, Inc. 401(k) Profit Sharing Plan; any former, current, or future members thereof; and any and all of their related entities, including, without limitation, any and all of their past or present predecessors, successors, or Successors-In-Interest, as well as any and all of their current or former associates, agents or other persons acting on their behalf, underwriters, insurers, reinsurers, attorneys, advisors, financial advisors, publicists, independent certified public accountants, auditors, accountants, assigns, creditors, administrators, heirs, estates, or legal representatives.
- 1.4 “Alternate Payee” shall mean a person, other than a Participant or Beneficiary, who is entitled to a benefit under the Plan as a result of a valid QDRO, as determined by the Plan Administrator on or before the date of the Preliminary Approval Order, where the QDRO relates to a Participant’s or Former Participant’s balance in the Plan during the Class Period.
- 1.5 “Arbitration” means any Claim initiated, served, submitted, filed, or otherwise advanced in arbitration by any Person against DST, the Advisory Committee, the Compensation Committee, and/or any other current or former subdivision, committee, officer, Board member, or employee of DST, as well as any other Person who may claim any entitlement to indemnification by DST; RCG; and/or Goldfarb pursuant to an Arbitration Agreement, in which, among other things, an Arbitration Claimant alleges any breach of any fiduciary duty under ERISA with respect to the Plan.
- 1.6 “Arbitration Agreement” means the DST Arbitration Program Agreement, the DST Output Arbitration Program and Agreement with Associate Opt Out Right, the DST Systems, Inc. Associate Handbook’s Arbitration Policy, and any other purported arbitration agreement to which DST and its current or former employees are or were asserted to be parties.
- 1.7 “Arbitration Award” means an award, whether for damages, attorneys’ fees, expenses, or costs, or some combination thereof, and whether designated as a final award or, no final award having been issued, as an interim award, issued to one of the Arbitration Claimants in one of the Arbitrations.
- 1.8 “Arbitration Claimant” means a claimant in one of the Arbitrations, and any other Class Member who has retained or otherwise engaged Arbitration Counsel, whether formally or informally, in connection with any Claims or potential Claims arising out of or in any way related to the Plan.

- 1.9 “Arbitration Counsel” means Humphrey, Farrington & McClain; The Klamann Law Firm; Kapke & Willerth; and White, Graham, Buckley & Carr.
- 1.10 “Arbitration Counsel’s Attorneys’ Fees and Expenses” means the amount to be paid by the Defendants, subject to the Court’s approval, to Arbitration Counsel in full and final settlement of any Claims related to any attorneys’ fees, expenses, and costs arising out of or in any way related to any Arbitrations, any Arbitration Awards, or any judgments issued by the U.S. District Court for the Western District of Missouri or by any court in favor of Arbitration Claimants or Arbitration Counsel, as well as any other claims for attorneys’ fees and expenses arising out of or in any way related to the Released Claims. Said amount does not include the amounts previously paid by the Defendants in connection with the June 2020 Settlement Agreement, with the settlement of other prior Arbitrations, or with the payments already made in satisfaction of earlier judgments.
- 1.11 “Beneficiary” shall mean a person who is entitled to receive a benefit under the Plan, as determined by the Plan Administrator on or before the date of the Preliminary Approval Order, that is derivative of a deceased Participant’s or Former Participant’s interest in the Plan, other than an Alternate Payee. A Beneficiary includes, but is not limited to, a spouse, surviving spouse, domestic partner, child, or other individual or trust designated by the Participant or Former Participant, or determined under the terms of the Plan to be entitled to a benefit.
- 1.12 “CAFA” means the Class Action Fairness Act of 2005.
- 1.13 “CAFA Fees and Costs” shall mean the reasonable fees and expenses incurred by Defendants in complying with CAFA, as set forth herein.
- 1.14 “*Canfield Action*” means *Canfield, et al. v. SS&C Techs. Holdings, Inc., et al.*, Case No. 18-cv-8913 (S.D.N.Y.), which the Court dismissed on November 19, 2021, Case No. 21-03086 (2d Cir.), and any and all cases consolidated therewith.
- 1.15 “*Canfield Plaintiffs*” means Robert Canfield, Bonnie Kartz, Latrecia Onunkwor, Diana Weaver, and David Ostermeyer.
- 1.16 “*Canfield/Mendon Counsel*” means Kent, Beatty & Gordon, LLP.
- 1.17 “*Canfield/Mendon Plaintiffs*” means Robert Canfield, Bonnie Kartz, Latrecia Onunkwor, Diana Weaver, David Ostermeyer, Mark Mendon, and Jill Pehlman.
- 1.18 “Case Contribution Award(s)” means any monetary amount(s) approved by the Court to be paid from the Qualified Settlement Fund in recognition of the Named Plaintiffs’ assistance in the prosecution of this Action and payable pursuant to Section 13.3.
- 1.19 “Civil Penalties” means the amount of Nine Million, Forty-Five Thousand, Four Hundred Fifty-Five Dollars and Zero Cents (\$9,045,455.00) assessed by the Secretary under 29 U.S.C. § 1132(l) in connection with this Settlement.

- 1.20 “Claim” means any and all manner of claims, cross-claims, counterclaims, third-party claims, actions, causes of action, potential actions, suits, arbitration demands, controversies, costs, damages, fees, losses, fines, liens, obligations, liabilities, proceedings, judgments and demands whatsoever, known or unknown, suspected or unsuspected, accrued or unaccrued, whether class, individual or otherwise, arising under the laws, regulations or common law of the United States of America, any state or political subdivision thereof, or any foreign country or jurisdiction, in law, in contract or in equity, and regardless of legal theory, including theories of indemnity, contribution, and comparative or proportionate fault, and any other legal theory.
- 1.21 “Class Counsel” means Miller Shah LLP and Olivier & Schreiber LLP.
- 1.22 “Class Counsel’s Attorneys’ Fees and Expenses” means the amount awarded by the Court to Class Counsel as compensation for the services provided in connection with the Action by Class Counsel, and the expenses incurred by such counsel, which amount shall be recovered from the Total Settlement Payment.
- 1.23 “Class Members” means all individuals in the Settlement Class, including the Named Plaintiffs.
- 1.24 “Class Notice” means the notice of (i) pendency of class action, certification of Class for Settlement purposes, and Settlement; (ii) Fairness Hearing; and (iii) Motion(s) for Case Contribution Awards and/or Attorneys’ Fees and Expenses, substantially in the form attached hereto as Exhibit A.
- 1.25 “Class Period” means the period from March 14, 2010 through July 31, 2016.
- 1.26 “Compensation Committee” means the Compensation Committee of the Board of Directors of DST Systems, Inc.; any former, current, or future members thereof; and any and all of their related entities, including, without limitation, any and all of their past or present predecessors, successors, or Successors-In-Interest, as well as any and all of their current or former associates, agents or other persons acting on their behalf, underwriters, insurers, reinsurers, attorneys, advisors, financial advisors, publicists, independent certified public accountants, auditors, accountants, assigns, creditors, administrators, heirs, estates, or legal representatives.
- 1.27 “Complaint” means the Third Amended Class Action Complaint filed in this Action on February 4, 2022.
- 1.28 “Cooper Action” means *Cooper v. Ruane, Cunniff & Goldfarb Inc.*, Case No. 16-cv-1900 (S.D.N.Y.), Case No. 17-2805 (2d Cir.), and any and all cases consolidated therewith.
- 1.29 “Court” means the United States District Court for the Southern District of New York.
- 1.30 “Defendants” means, collectively, the *Ferguson* DST Defendants, RCG, and Goldfarb.
- 1.31 “Defendant Releasees” means the Defendants and any and all of their respective related parties or entities, including, without limitation, any and all members of their immediate

families, their respective agents or other persons acting on their behalf at any time, their respective current or former officers, shareholders, partners, Board members, employees, attorneys, advisors, financial advisors, insurers, accountants, assigns, creditors, heirs, estates, and legal representatives.

- 1.32 “Defense Counsel” means, collectively, O’Melveny & Myers LLP; Paul, Weiss, Rifkind, Wharton & Garrison LLP; and Proskauer Rose LLP.
- 1.33 “DST” means DST Systems, Inc. and any and all of its related entities, including, without limitation, any and all of its past or present parents, including SS&C Technologies Holdings, Inc., as well as subsidiaries, affiliates, predecessors, successors, or Successors-In-Interest, as well as any and all of its current or former officers, shareholders, partners, directors, employees, associates, agents or other persons acting on its behalf, underwriters, insurers, reinsurers, attorneys, advisors, financial advisors, publicists, independent certified public accountants, auditors, accountants, assigns, creditors, administrators, heirs, estates, or legal representatives.
- 1.34 “DST Action” means *DST Systems, Inc., et al. v. Ruane, Cunniff & Goldfarb Inc., et al.*, Case No. 1:20-cv-09472 (S.D.N.Y.), and any and all cases consolidated therewith.
- 1.35 “Effective Date of Settlement” means the date on which all of the conditions to Settlement set forth in Section 3 of this Settlement Agreement have been fully satisfied or waived and the Settlement shall have become Final.
- 1.36 “ERISA” means the Employee Retirement Income Security Act of 1974, as amended, including all regulations promulgated thereunder.
- 1.37 “Escrow Account” shall mean an account at an established Financial Institution agreed upon by the Settling Parties that is established for the deposit of the Settlement Fund and amounts relating to it, such as interest earned on investment of the Settlement Fund.
- 1.38 “Escrow Agent” shall mean the entity (The Huntington National Bank, or any other Financial Institution agreed upon by the Settling Parties) approved by the Settling Parties to act as escrow agent for any portion of the Settlement Fund deposited in or accruing in the Escrow Account pursuant to this Agreement.
- 1.39 “Fairness Hearing” means the hearing at which the Court will be asked to make a final decision, pursuant to Federal Rule of Civil Procedure 23, as to the items set forth in Section 3.3.5.
- 1.40 “*Ferguson IP*” means *Ferguson, et al. v. Goldfarb*, Case No. 1:20-cv-07092 (S.D.N.Y.), and any and all cases consolidated therewith.
- 1.41 “*Ferguson DST Defendants*” means, collectively, DST, the Advisory Committee, and the Compensation Committee.
- 1.42 “Final” when referring to the Final Approval Order or any other judgment or court order in this Action means: (i) if no appeal is filed, the expiration date of the time provided for

filing or noticing of any appeal under the Federal Rules of Appellate Procedure, *i.e.*, thirty (30) days after entry of the judgment or order; or (ii) if there is an appeal from the judgment or order, the latter of (a) the date of final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise, or (b) the date the judgment or order is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance following review pursuant to that grant.

- 1.43 “Final Approval Order and Judgment” or “Final Approval Order” means the order of dismissal with prejudice entered by the Court as contemplated by Section 3.3.6 of this Settlement Agreement and entry of the Permanent Injunction, which order shall be substantially in the form set out as Exhibit B.
- 1.44 “Financial Institution” means an FDIC-insured bank at which Class Counsel will establish the Qualified Settlement Fund.
- 1.45 “First DST Settlement Payment” means that One Hundred Thousand Dollar (\$100,000.00) portion of the Total Settlement Payment to be paid by DST to the Qualified Settlement Fund in the manner set forth in Section 10.1.
- 1.46 “First Goldfarb Settlement Payment” means that One Hundred Thousand Dollar (\$100,000.00) portion of the Total Settlement Payment to be paid by Goldfarb to the Qualified Settlement Fund in the manner set forth in Section 10.1.
- 1.47 “First RCG Settlement Payment” means that One Hundred Thousand Dollar (\$100,000.00) portion of the Total Settlement Payment to be paid by RCG to the Qualified Settlement Fund in the manner set forth in Section 10.1.
- 1.48 “First Settlement Payment” means the sum of the First DST Settlement Payment; the First Goldfarb Settlement Payment; and the First RCG Settlement Payment.
- 1.49 “Former Participant” shall mean any Class Member who maintained a positive balance in the Plan at any time during the Class Period, but who does not have an Active Account.
- 1.50 “Former Participant Rollover Form” shall mean the form to be provided to Former Participants and returned to the Settlement Administrator by Former Participants and Beneficiaries, which is attached as Exhibit E.
- 1.51 “Goldfarb” means Robert D. Goldfarb and any and all of his past or present agents or other persons acting on his behalf, underwriters, insurers, reinsurers, attorneys, advisors, financial advisors, publicists, independent certified public accountants, auditors, accountants, assigns, creditors, administrators, heirs, estates, or legal representatives.
- 1.52 “Independent Fiduciary” means the fiduciary who is retained pursuant to Section 3.7 and has no “relationship to” or “interest in” (as those terms are used in the Class Exemption referred to in Section 3.7) any of the Settling Parties or any other person or entity with an



interest in or relationship in any respect to the Settling Parties or the subject matter of the Action.

- 1.53 “Independent Fiduciary Fees and Costs” shall mean the reasonable fees and expenses of the Independent Fiduciary.
- 1.54 “June 2020 Settlement Agreement” means that agreement entered into by certain of the Arbitration Claimants and the *Canfield/Mendon* Plaintiffs, on the one hand, and RCG, on the other, dated June 5, 2020, whereby, among other things, RCG agreed to pay certain of the Arbitration Claimants and the *Canfield/Mendon* Plaintiffs an amount of \$12,000,000.00 in exchange for certain of the Arbitration Claimants and the *Canfield/Mendon* Plaintiffs executing individual releases releasing RCG and Goldfarb from any and all claims arising from management of the Plan.
- 1.55 “*Mendon* Action” means *Mendon, et al. v. SS&C Techs. Holdings, Inc., et al.*, Case No. 18-cv-10252 (S.D.N.Y.), which the Court dismissed on November 19, 2021, Case No. 21-03088 (2d Cir.), and any and all cases consolidated therewith.
- 1.56 “*Mendon* Plaintiffs” means Mark Mendon and Jill Pehlman.
- 1.57 “Named Plaintiffs” means Michael L. Ferguson, Myrl C. Jeffcoat, and Deborah Smith.
- 1.58 “Net Settlement Fund” means the Qualified Settlement Fund less any: (i) Settlement Administration Expenses; (ii) Independent Fiduciary Fees and Costs; (iii) CAFA Fees and Costs; (iv) Case Contribution Award(s); and (v) awards by the Court of attorneys’ fees and expenses to any counsel.
- 1.59 “Participant” shall mean any person who was a participant in the Plan at any time during the Class Period, including any beneficiary of a deceased person who was a participant in the Plan at any time during the Class Period, and any person who is entitled to a benefit under the Plan as a result of a Qualified Domestic Relations Order.
- 1.60 “Permanent Injunction” means the permanent injunction as set forth in Section 3.3.6.
- 1.61 “Person” means an individual, partnership, corporation, employee benefit plan, or any other form of organization.
- 1.62 “Plaintiffs” means Named Plaintiffs, the Plan, Clive V. Cooper, and each and every Class Member and their Successors-In-Interest.
- 1.63 “Plaintiff Releasers” means Plaintiffs, and any and all of their related parties, including, without limitation, any and all members of their immediate families, agents or other persons acting on their behalf, attorneys, advisors, financial advisors, accountants, assigns, creditors, heirs, estates, and legal representatives.
- 1.64 “Plan” means the DST Systems, Inc. 401(k) Profit Sharing Plan.

- 1.65 “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund, proposed by Class Counsel and approved by the Court, that is set forth in the Class Notice.
- 1.66 “Preliminary Approval Order” means the order to be entered by the Court: (i) preliminarily approving the proposed Settlement; (ii) preliminarily certifying the Settlement Class solely for Settlement purposes; (iii) appointing the Settlement Administrator; (iv) preliminarily determining that the proposed forms of Class Notice and Summary Notice: (a) fairly and adequately describe the terms and effect of the Settlement Agreement; (b) give notice to the Settlement Class of the time and place of the hearing of the motion for final approval of the Settlement; and (c) describe how recipients of the Class Notice may object to approval of the Settlement; (v) finding that the proposed manner of communicating the Class Notice and Summary Notice to Class Members is the best notice practicable under the circumstances; and (vi) finding that the proposed provision of the Class Notice and Summary Notice to Class Members otherwise meets all of the requirements of Federal Rule of Civil Procedure 23 and any other applicable law. Unless otherwise ordered by the Court, the Preliminary Approval Order also shall provide that, to be considered timely, any objection to the Settlement must be received by the Court and the Settling Parties no later than ten (10) calendar days before the Fairness Hearing, Class Counsel and/or Defense Counsel shall file a response to any objections no later than three (3) calendar days before the Fairness Hearing, and objectors will not be permitted a reply in support of their objection. The Preliminary Approval Order shall be substantially in the form set out in Exhibit C.
- 1.67 “PSP” means the profit-sharing portion of the Plan, which was terminated in 2016.
- 1.68 “QDRO” shall mean, for purposes of this Agreement, a valid Qualified Domestic Relations Order as defined in 29 U.S.C. § 1056(d)(3)(K), as determined by the Settlement Administrator and entered on or before the date of the Preliminary Approval Order.
- 1.69 “Qualified Settlement Fund” is defined in Section 10.
- 1.70 “RCG” means Ruane, Cunniff & Goldfarb Inc. and any and all of its related entities, including, without limitation, any and all of its past or present parents, subsidiaries, affiliates, predecessors, successors, or Successors-In-Interest, as well as any and all of its current or former officers, shareholders, partners, directors, employees, associates, agents or other persons acting on its behalf, underwriters, insurers, reinsurers, attorneys, advisors, financial advisors, publicists, independent certified public accountants, auditors, accountants, assigns, creditors, administrators, heirs, estates, or legal representatives.
- 1.71 “Related Proceedings” means: (i) the *Cooper* Action; (ii) *Ferguson II*; (iii) the *Canfield* Action; (iv) the *DST* Action; (v) the *Mendon* Action; and (vi) the *Su* Action.
- 1.72 “Released Claims” means any and all actual or potential Claims, whether brought in an individual, representative or any other capacity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, arising out of or in any way related to: (i) any fact alleged in the Complaint and any prior or subsequent pleading or legal memorandum filed in the

Action; (ii) any fact alleged in a complaint or demand filed in any Related Proceeding or Arbitration and any subsequent pleading or legal memorandum filed in any Related Proceeding or Arbitration; (iii) the Plan (including, without limitation, the selection, retention, and monitoring of Plan investments; any action or inaction by any Plan fiduciary; or the performance, fees, and any other characteristic of the Plan); (iv) the subject matter of or the proceedings in this Action, any Related Proceeding, or any Arbitration; and (v) the approval of the Independent Fiduciary of the Settlement. As to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date of Settlement, Named Plaintiffs, the Plan, each and every Class Member, and Defendant Releasees shall expressly waive and shall be deemed to have waived, and by operation of the Final Approval Order and the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or of any other country, or any principle of common law, that is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.***

- 1.73 “Second DST Settlement Payment” means the Total DST Settlement Payment, less the First DST Settlement Payment, to be paid by DST to the Qualified Settlement Fund in the manner set forth in Section 10.1. The Second DST Settlement Payment shall be Forty-Seven Million, Eight Hundred Eighty-Four Thousand, Eight Hundred Forty-Eight Dollars and Thirty-Three Cents (\$47,884,848.33). In addition, DST shall independently pay Civil Penalties in the amount of Three Million, Fifteen Thousand, One Hundred Fifty-One Dollars and Sixty-Seven Cents (\$3,015,151.67) pursuant to Section 13.4 of this Agreement. Further, if by the time DST pays the Second DST Settlement Payment, at least nine months have passed since the Court granted preliminary approval of the Settlement Agreement in all material respects, then DST shall independently pay an additional \$100,000.00 to Arbitration Counsel, unless the Settlement Agreement has not become Final as of that time as a result of actions attributable to Arbitration Counsel, in which case no additional payment will be made.
- 1.74 “Second Goldfarb Settlement Payment” means the Total Goldfarb Settlement Payment, less the First Goldfarb Settlement Payment, to be paid by Goldfarb to the Qualified Settlement Fund in the manner set forth in Section 10.1. The Second Goldfarb Settlement Payment shall be Forty-Nine Million, Nine Thousand, Eight Hundred Forty-Eight Dollars and Thirty Three Cents (\$49,009,848.33). In addition, Goldfarb shall independently pay Civil Penalties in the amount of Three Million, Fifteen Thousand, One Hundred Fifty-One Dollars and Sixty-Seven Cents (\$3,015,151.67) pursuant to Section 13.4 of this Agreement.
- 1.75 “Second RCG Settlement Payment” means the Total RCG Settlement Payment, less the First RCG Settlement Payment, to be paid by RCG to the Qualified Settlement Fund in the manner set forth in Section 10.1. The Second RCG Settlement Payment shall be Eighteen Million, Three Hundred Eighty-Four Thousand, Eight Hundred Forty-Eight Dollars and Thirty-Four Cents (\$18,384,848.34). In addition, RCG shall independently pay Civil

Penalties in the amount of Three Million, Fifteen Thousand, One Hundred Fifty-One Dollars and Sixty-Six Cents (\$3,015,151.66) pursuant to Section 13.4 of this Agreement.

- 1.76 “Second Settlement Payment” means the sum of the Second DST Settlement Payment; the Second Goldfarb Settlement Payment; and the Second RCG Settlement Payment.
- 1.77 “Secretary” means the Secretary or the Acting Secretary of the United States Department of Labor, and any and all of his or her related parties or entities, including, without limitation, any and all of his or her predecessors, successors, or Successors-In-Interest, as well as any and all of his or her current or former officers, directors, employees, associates, agents or other persons acting on his or her behalf, attorneys, advisors, publicists, assigns, creditors, administrators, heirs, estates, or legal representatives.
- 1.78 “Settlement” means the compromise and settlement embodied in this Settlement Agreement.
- 1.79 “Settlement Administration Expenses” or “Administration Costs” means the reasonable and actually incurred fees, costs, and expenses associated with retaining the Settlement Administrator, providing Class Notice, publishing Summary Notice, and implementing the Plan of Allocation, and any other costs otherwise actually and reasonably incurred by the Settlement Administrator in administering the Settlement.
- 1.80 “Settlement Administrator” means a third party retained by Class Counsel (Strategic Claims Services), subject to approval by Defendants and approval of the Court, to distribute the Class Notice and Summary Notice, and to implement the Plan of Allocation as described in Section 12.4.
- 1.81 “Settlement Agreement” means this Settlement Agreement and Release between Plaintiffs and Defendants, and, with respect to certain provisions enumerated herein, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel.
- 1.82 “Settlement Agreement Execution Date” means the date the last signature of counsel for the Settling Parties, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel is affixed to this Settlement Agreement.
- 1.83 “Settlement Class” means all Participants in the Plan during the Class Period, except: (i) all individuals who during the Class Period were members of the Advisory Committee; (ii) all individuals who during the Class Period were members of the Compensation Committee; (iii) any other individuals who served as fiduciaries of the Plan during the Class Period; and (iv) the beneficiaries, immediate family members, estates, and executors of (i)-(iii). The specific individuals excluded from the Settlement Class are listed in Exhibit G.
- 1.84 “Settlement Fund” means the First Settlement Payment and the Second Settlement Payment, plus any interest earned thereon.
- 1.85 “Settling Parties” means Plaintiffs and Defendants.

- 1.86 “*Su* Action” means *Su v. Ruane, Cunniff & Goldfarb Inc., et al.*, Case No. 1:19-cv-09302 (S.D.N.Y.), and any and all cases consolidated therewith.
- 1.87 “*Su* DST Individual Defendants” means Gregg W. Givens, Gerard M. Lavin, M. Elizabeth Sweetman, Douglas W. Tapp, George L. Argyros, Lawrence M. Higby, Travis E. Reed, Lowell L. Bryan, Samuel G. Liss, Brent L. Law, Lynn Dorsey Bleil, Jerome H. Bailey, Gary D. Forsee, Kenneth V. Hager, Charles E. Haldeman, Jr., and Randall D. Young.
- 1.88 “Successor-In-Interest” means a Person’s estate, legal representatives, heirs, successors, or assigns, and any other Person who can make a legal claim by or through such Person.
- 1.89 “Summary Notice” means the form of notice substantially in the form attached hereto as Exhibit D, which shall be published in *USA Today* and PR Newswire.
- 1.90 “Taxes” means: (i) all federal, state, local, and/or foreign taxes of any kind (together with any and all interest, penalties, additions to tax, and additional amounts imposed with respect thereto) arising with respect to the Qualified Settlement Fund as a separate taxpayer (including any taxes for any period during which the Qualified Settlement Fund does not qualify as a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1, if any); and (ii) the reasonable expenses and costs incurred by the Settlement Administrator in connection with determining the amount of, reporting, and paying any taxes owed by the Qualified Settlement Fund (including, without limitation, reasonable expenses of tax attorneys and accountants).
- 1.91 “Total DST Settlement Payment” means the sum of the First DST Settlement Payment and the Second DST Settlement Payment.
- 1.92 “Total Goldfarb Settlement Payment” means the sum of the First Goldfarb Settlement Payment and the Second Goldfarb Settlement Payment.
- 1.93 “Total RCG Settlement Payment” means the sum of the First RCG Settlement Payment and the Second RCG Settlement Payment.
- 1.94 “Total Settlement Payment” means the sum of the Total DST Settlement Payment; the Total Goldfarb Settlement Payment; and the Total RCG Settlement Payment.

## 2. RECITALS

- 2.1 On September 1, 2017, the Named Plaintiffs, on behalf of themselves and on behalf of the Plan, filed the Action.
- 2.2 Class Counsel have conducted an extensive investigation into the facts, circumstances, and legal issues associated with the allegations made in the Action. This investigation has included, among other things: engaging in discovery, appeals, certification of the class in this Action, and extensive consultation and work with experts to analyze and present the claims at issue.

- 2.3 In the Action, Plaintiffs allege that certain Defendants were fiduciaries of the Plan and that they breached their fiduciary duties owed to Plan participants and beneficiaries, including Named Plaintiffs, by, among other things, investing an inappropriate amount of the PSP's assets in the stock of Valeant Pharmaceuticals ("VRX"), failing to timely reduce and/or eliminate the PSP's investments in VRX, and, in the case of the *Ferguson* DST Defendants, failing to adequately monitor the fiduciaries managing the PSP's investments.
- 2.4 Named Plaintiffs and Class Counsel consider it desirable and in the Plan's and Class Members' best interests that the claims in the Action be settled upon the terms set forth below. Named Plaintiffs and Class Counsel have concluded that such terms are fair, reasonable, and adequate and that this Settlement will result in valuable benefits to the Plan and the Settlement Class.
- 2.5 On October 18, 2019, the Secretary filed the *Su* Action.
- 2.6 The Secretary has conducted an extensive pre-complaint and post-complaint investigation into the facts, circumstances, and legal issues associated with the allegations made in the *Su* Action. This investigation has included, among other things: engaging in discovery and extensive consultation and work with experts to analyze and present the claims at issue.
- 2.7 In the *Su* Action, the Secretary alleges that the defendants in the *Su* Action were fiduciaries of the Plan and that they breached their fiduciary duties owed to Plan participants and beneficiaries by, among other things, investing the PSP's assets in an inappropriately non-diversified manner, failing to timely rebalance the PSP's investments, failing to establish a written investment policy for the PSP as required by the Plan document, and, in the case of DST, the Advisory Committee, the Compensation Committee, and the *Su* DST Individual Defendants, failing to adequately monitor the fiduciaries managing the PSP's investments.
- 2.8 The Secretary and the undersigned Defendants likewise agree to settle the claims in the *Su* Action upon the applicable terms below and those set forth in the Joint Stipulation of Settlement and Release of Claims, which is also entered into by the *Su* DST Individual Defendants.
- 2.9 Arbitration Counsel have initiated, served, submitted, filed, or otherwise advanced 579 Arbitrations against DST. Arbitration Counsel conducted an extensive investigation into the facts, circumstances and legal issues associated with the allegations made in the Arbitrations. This investigation has included, among other things: a detailed review and outline of more than 100,000 pages of documents, engaging in written and deposition discovery and full merits litigation in more than 300 arbitration trials, scores of arbitration appeals, and extensive consultation and work with experts to analyze and present the claims at issue in the Arbitrations. Arbitration Counsel have also extensively litigated against DST in both the U.S. District Court for the Western District of Missouri and in this Court the legality of the Arbitrations and the enforceability of the Arbitration Awards.
- 2.10 Arbitration Counsel likewise agree to settle all Claims arising out of or in any way related to the Released Claims, including all Claims currently pending in any court or in arbitration against DST, the Advisory Committee, and/or the Compensation Committee, and including

all Claims for attorneys' fees, costs, and expenses, upon the applicable terms below. Arbitration Counsel have concluded that the Settlement is in the best interests of the Arbitration Claimants, and Arbitration Counsel agree to recommend the Settlement to the Arbitration Claimants.

- 2.11 *Canfield/Mendon* Counsel likewise agree to settle all Claims arising out of or in any way related to the Released Claims, including all Claims currently pending in any court against DST, the Advisory Committee, and/or the Compensation Committee, and including all Claims for attorneys' fees, costs, and expenses, upon the applicable terms below. *Canfield/Mendon* Counsel have concluded that the Settlement is in the best interests of the *Canfield/Mendon* Plaintiffs, and *Canfield/Mendon* Counsel agree to recommend the Settlement to the *Canfield/Mendon* Plaintiffs.
- 2.12 Therefore, the Settling Parties and, with respect to certain provisions enumerated herein, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel, in consideration of Defendants' payment of the Total Settlement Payment and the Civil Penalties (altogether, \$124,625,000.00), and, if applicable, the additional \$100,000.00 payment from DST to Arbitration Counsel described in Section 1.73, and the promises, covenants and agreements herein described, acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows:

### **3. CONDITIONS TO EFFECTIVENESS OF THE SETTLEMENT**

- 3.1 Best Efforts. The Settling Parties, Arbitration Counsel, and *Canfield/Mendon* Counsel agree to undertake their best efforts, including all lawful steps and efforts contemplated by this Settlement Agreement, and any other lawful steps or efforts that may become necessary by order of the Court (unless such order materially modifies the terms of this Settlement Agreement, including by granting Arbitration Counsel an award of attorneys' fees and costs less than \$15,500,000.00) or otherwise to obtain preliminary and final Court approval of the Settlement, and after a Final Approval Order is obtained, to satisfy the conditions to effectiveness and finality enumerated in this Section 3. The Settling Parties, Arbitration Counsel, and *Canfield/Mendon* Counsel further agree that they will not take any action inconsistent with or in frustration of obtaining such Court approval. However, nothing contained herein shall bar or prohibit any Class Member, including the Arbitration Claimants, from objecting to the Settlement as provided by the terms herein.
- 3.2 Effectiveness of Settlement. The Settlement provided for in this Settlement Agreement shall not become binding unless and until each and every one of the following conditions in Sections 3.3 through 3.10 shall have been satisfied or expressly waived pursuant to Section 15.7.
- 3.3 Court Approval. The Settlement contemplated under this Settlement Agreement shall have been approved by the Court, as provided for in this Section 3.3, including:
- 3.3.1 Motion for Preliminary Approval of Settlement and of Class Notice and Summary Notice. The Settling Parties shall have asked that the Court rule on the Motion for Preliminary Approval within 30 days after its submission, and the Court shall have

approved Plaintiffs' motion by issuing the Preliminary Approval Order substantially in the form set out in Exhibit C.

- 3.3.2 Settlement Class Certification. The Court shall have certified the Action as a non-opt-out class action (preliminarily and finally) for settlement purposes pursuant to Federal Rule of Civil Procedure 23(b)(1), with Named Plaintiffs as the Settlement Class representatives, and appointing Class Counsel as counsel for the Settlement Class. If the Settlement does not become Final, then the Action will for all purposes revert to its status as of October 31, 2022, and the actions pending between DST and Arbitration Claimants will revert to their status as of May 8, 2023. The Settling Parties agree that RCG, Arbitration Counsel, and *Canfield/Mendon* Counsel will take no position with respect to the certification of the Settlement Class.
- 3.3.3 Issuance of Notice. The Settling Parties shall request that Class Notice be disseminated to all Participants in the Plan during the Class Period by e-mail or mail within fourteen (14) calendar days following entry of the Preliminary Approval Order by e-mail or mail. The Settlement Administrator shall cause the Summary Notice to be published one time in *USA Today* and PR Newswire within fourteen (14) calendar days following entry of the Preliminary Approval Order. The Settling Parties shall request that the Court approve a notice period of no greater than sixty (60) calendar days from the date on which the Court enters the Preliminary Approval Order.
- 3.3.4 Motion for Final Approval of Class Action Settlement. On the date set by the Court in its Preliminary Approval Order, or at such other time established by the Court, Plaintiffs shall have filed a motion for a Final Approval Order.
- 3.3.5 Fairness Hearing. The Settling Parties shall request that the Fairness Hearing be set within fourteen (14) calendar days from the end of the notice period. On the date set by the Court in its Preliminary Approval Order, the Settling Parties shall participate in the Fairness Hearing and ask that the Court rule on any timely objections during the Fairness Hearing and determine by Final Order whether: (i) the proposed Settlement on the terms and conditions provided for in this Settlement Agreement is fair, reasonable, and adequate and should be approved by the Court; (ii) Final Judgment should be entered; (iii) the Settlement Class should be certified as a mandatory class meeting the applicable requirements for a settlement class under Federal Rule of Civil Procedure 23(b)(1); (iv) the requirements of Federal Rule of Civil Procedure 23 and due process have been satisfied in connection with the distribution of the Class Notice and the Summary Notice to members of the Settlement Class; (v) the requirements of CAFA have been satisfied; (vi) the Permanent Injunction should be entered; (vii) the Plan of Allocation consistent with Section 12.4 shall be approved; (viii) to approve Case Contribution Award(s) from the Qualified Settlement Fund and, if so, the amount(s); (ix) to award from the Qualified Settlement Fund attorneys' fees and further expenses, and, if so, the amounts to Class Counsel, Arbitration Counsel, and *Canfield/Mendon* Counsel; and (x) to approve payment from the Qualified Settlement Fund for Settlement Administration Expenses, Independent Fiduciary Fees and Costs, and CAFA Fees and Costs. The Settling Parties, Arbitration



Counsel, and *Canfield/Mendon* Counsel covenant and agree that they will reasonably cooperate with one another in obtaining an acceptable Final Approval Order substantially in the form set out as Exhibit B. Further, the Settling Parties, Arbitration Counsel, and *Canfield/Mendon* Counsel agree not to do anything inconsistent with obtaining such a Final Approval Order.

3.3.6 The Final Approval Order shall be entered substantially in the form set out as Exhibit B, no less than one hundred (100) days after the submission to the Court of the Motion for Preliminary Approval. The Final Approval Order shall approve of and enter the Permanent Injunction, and specifically shall provide:

3.3.6.1 Plaintiff Releasors, and any Person purporting to act on their behalf or in concert with them, or asserting a Claim under or through them, are barred, enjoined, and restrained from commencing, prosecuting, or asserting, or continuing to prosecute or assert, other than in a timely and proper appeal from an order in this Action to the United States Court of Appeals for the Second Circuit or the United States Supreme Court, any Claims against any Person or entity (including other Plaintiff Releasors), where the Claim is included in, in any way relates to, or arises out of the Released Claims, including in which any Plaintiff Releasor seeks to recover from any Person or entity (including other Plaintiff Releasors): (i) any amounts that any Defendant Releasee has or might become liable to pay to the Settlement Class or any Class Member; and/or (ii) any costs, expenses, or attorneys' fees from prosecuting or defending any Claim by any Class Member. All such Claims shall be extinguished, discharged, satisfied, and unenforceable.

3.3.6.2 Plaintiff Releasors, and any Person purporting to act on their behalf or in concert with them, or asserting a Claim under or through them, are barred, enjoined, and restrained from commencing, prosecuting, or asserting, or continuing to prosecute or assert, any Claims in any Arbitration, or any Claims to confirm or to enforce any Arbitration Award, or any Claims to enforce any judgment arising from or in any way related to any Arbitration Award, including, without limitation, any award of damages, attorneys' fees, expenses, or costs, against any Defendant Releasee. All such Claims shall be extinguished, discharged, satisfied, and unenforceable.

3.3.6.3 All Persons who have represented or are representing any Class Member, and any Person purporting to act on their behalf or in concert with them, are barred, enjoined, and restrained from commencing, prosecuting, or asserting, or continuing to prosecute or assert, against any Class Members, Class Counsel, Arbitration Counsel, *Canfield/Mendon* Counsel, or Defendant Releasees, in any forum, action, or proceeding of any kind, any Claims for attorneys' fees, expenses or costs in connection with any representation of Class Members arising from or related in any way to the Released Claims, except as set out in Section 13 and in the manner prescribed by Federal Rule of Civil Procedure 23(h), or in a timely and proper appeal from an order in this Action to the United States Court of Appeals for the Second Circuit or the United States Supreme Court.

- 3.4 Finality of Final Approval Order. The Final Approval Order shall have become Final.
- 3.5 Dismissal of Certain Actions.
- 3.5.1 The Joint Stipulation of Settlement and Release of Claims substantially in the form attached hereto as Exhibit F shall have been executed by the Secretary, the Defendants, and the *Su* Individual DST Defendants, through their respective counsel, and shall have been filed in the *Su* Action by the time when or reasonably promptly after the Motion for Preliminary Approval of Settlement and of Class Notice and Summary Notice is filed.
- 3.5.2 Within five (5) business days after the Final Approval Order becomes Final, the parties to the *Cooper* Action; *Ferguson II*; the Arbitrations; any action filed by any of the Arbitration Claimants against DST in the United States District Court for the Western District of Missouri or any other court; and the *DST* Action shall have taken all necessary steps to effectuate the dismissal of those proceedings with prejudice.
- 3.5.3 Within five (5) business days after the Final Approval Order becomes Final, the parties to any appeals from any orders of this Court in (i) this Action, (ii) the *Canfield* Action, or (iii) the *Mendon* Action that presently are on appeal in the United States Court of Appeals for the Second Circuit shall have taken all necessary steps to withdraw or otherwise effectuate the dismissal of those appeals with prejudice.
- 3.5.4 Within five (5) business days after the Final Approval Order becomes Final, the parties to any appeals from any orders of the United States District Court for the Western District of Missouri entered in any action filed by any of the Arbitration Claimants against DST in that court that presently are on appeal in the United States Court of Appeals for the Eighth Circuit shall have taken all necessary steps to withdraw or otherwise effectuate the dismissal of those appeals with prejudice.
- 3.5.5 The Court shall have dismissed the *Cooper* Action, the *Su* Action, *Ferguson II*, and the *DST* Action with prejudice.
- 3.5.6 Any actions filed by any of the Arbitration Claimants against DST in the United States District Court for the Western District of Missouri or any other court shall have been dismissed with prejudice.
- 3.5.7 Any appeals referenced in Section 3.5.3 shall have been dismissed with prejudice.
- 3.5.8 Any appeals referenced in Section 3.5.4 shall have been dismissed with prejudice.
- 3.6 Compliance with CAFA. The Court shall have determined that Defendants complied with CAFA and their notice obligations by providing appropriate federal and state officials with information about the Settlement. The CAFA Fees and Costs shall be paid out of the Qualified Settlement Fund. The CAFA Fees and Costs shall not exceed \$10,000.00 without express leave of Court.

- 3.7 Approval by Independent Fiduciary.
- 3.7.1 Approval of the provisions of the Settlement Agreement by an Independent Fiduciary is a condition to the Settlement. The Independent Fiduciary shall have approved and authorized in writing the Settlement in accordance with Prohibited Transaction Exemption 2003-39, “Release of Claims and Extensions of Credit in Connection with Litigation,” issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632 (the “Class Exemption”) and proposed amendment to Prohibited Transaction Exemption 2003-39, issued November 21, 2007, by the United States Department of Labor, 72 Fed. Reg. 65,597. If the Independent Fiduciary does not authorize the Settlement, then the Settlement Agreement shall terminate and become null and void and the provisions of Section 14.3 shall apply; provided, however, that the Settlement Agreement shall not terminate and become null and void and the provisions of Section 14.3 shall not apply if the Settling Parties, and to the extent any modifications are proposed to certain provisions applicable to them, the Secretary, Arbitration Counsel, and/or *Canfield/Mendon* Counsel, agree in writing prior to the Fairness Hearing to modify the Settlement to satisfy objections by the Independent Fiduciary to the Settlement.
- 3.7.2 The Independent Fiduciary Fees and Costs shall be paid out of the Qualified Settlement Fund. The total charges by the Independent Fiduciary shall not exceed \$100,000.00 without express leave of Court. The Independent Fiduciary shall acknowledge in writing that it is a fiduciary with respect to the Settlement of this Action on behalf of the Plan. Defendants, Class Counsel, Arbitration Counsel, and *Canfield/Mendon* Counsel will comply with reasonable requests for non-privileged information made by the Independent Fiduciary that are for the purpose of reviewing and evaluating the Settlement Agreement.
- 3.8 Dismissal of Action. The Action shall have been dismissed with prejudice on the Effective Date of Settlement.
- 3.9 All Defendants shall have paid in full their respective portions of the Total Settlement Payment to the Qualified Settlement Fund in the manner set forth in Section 10.1.
- 3.10 No Termination. The Settlement shall not have terminated pursuant to Section 14 before Sections 3.3 through 3.9 have been met.
- 3.11 Materiality of Settlement Conditions. The Settling Parties, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel expressly acknowledge that the Settlement is specifically conditioned upon the occurrence of each and every one of the foregoing conditions precedent prior to the Effective Date of Settlement, and that a failure of any condition set forth in Sections 3.3 through 3.10 at any time prior to the Effective Date of Settlement shall make this Settlement Agreement, and any obligation to pay the Total Settlement Payment and Civil Penalties, or any portion thereof, null, void, and of no force and effect unless the Settling Parties, and as to any provisions applicable to them, the Secretary, Arbitration Counsel, and/or *Canfield/Mendon* Counsel agree in writing that despite the non-occurrence of one of the above conditions the remainder of the Settlement Agreement shall go forth.

#### **4. RELEASES AND COVENANTS NOT TO SUE**

- 4.1 Release of the Defendant Releasees by Plaintiffs. Subject to Sections 4.11 and 14, upon the Effective Date of Settlement, Plaintiffs, on behalf of themselves and Plaintiff Releasors, absolutely and unconditionally release and forever discharge Defendant Releasees from any and all Released Claims, accruing on or before the date the Court enters the Final Approval Order and Judgment, that Plaintiffs or Plaintiff Releasors directly, indirectly, derivatively, or in any other capacity ever had or now have against any of the Defendant Releasees. Each Plaintiff Releasor shall be deemed to have released all Released Claims against the Defendant Releasees regardless of whether any such Plaintiff Releasor ever seeks or obtains by any means any distribution from the Settlement Fund, Qualified Settlement Fund, or Net Settlement Fund.
- 4.2 Covenant Not to Sue by Plaintiffs. Subject to Sections 4.11 and 14, upon the Effective Date of Settlement, Plaintiffs, on behalf of themselves and Plaintiff Releasors, covenant and agree: (a) not to file against any Defendant Releasee any of the Released Claims, or re-file any Claim brought in this Action, the Arbitrations, the *Canfield* Action, the *Mendon* Action, the *Cooper* Action, *Ferguson II*, or in any action previously filed by any of the Arbitration Claimants against DST, the Advisory Committee, the Compensation Committee, RCG, and/or Goldfarb in the U.S. District Court for the Western District of Missouri or in any other forum; and (b) that the foregoing covenant and agreement shall be a complete defense to any such Claims against any Defendant Releasee. The Plaintiffs, on behalf of themselves and Plaintiff Releasors, further agree that, in any action judicially determined to have been brought against any Defendant Releasee in violation of this covenant not to sue, attorneys' fees, expenses, and other costs of such litigation will be recoverable as damages by any Defendant Releasee subject to such an action.
- 4.3 Release of the Defendant Releasees by the Secretary. Subject to Sections 4.11 and 14, upon the Effective Date of Settlement, the Secretary absolutely and unconditionally releases and forever discharges Defendant Releasees from any and all Claims against any of the Defendant Releasees that the Secretary directly, indirectly, derivatively, or in any other capacity ever had or now has against any of the Defendant Releasees and that (i) arise out of or in any way relate to the investment of Plan assets through RCG or any action or inaction with respect to establishing a written investment policy for the Plan or (ii) were or could have been asserted in the *Su* Action.
- 4.4 Release of the Secretary by Defendants. Subject to Section 14, upon the Effective Date of Settlement, each of the Defendants releases any and all Claims against the Secretary relating to the investigation or litigation of the claims in the *Su* Action, including claims under the Equal Access to Justice Act, 5 U.S.C. § 504.
- 4.5 Defendant Release. Subject to Section 14, upon the Effective Date of Settlement, each of the Defendants absolutely and unconditionally releases and forever discharges each of the Defendant Releasees, each Class Member, the Plan, Arbitration Counsel, Class Counsel, and *Canfield/Mendon* Counsel from any and all actual or potential Claims whenever accruing, whether brought in an individual, representative or any other capacity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, arising out of or in any way

related to: (i) any fact alleged in the Complaint and any prior or subsequent pleading or legal memorandum filed in the Action; (ii) any fact alleged in a complaint or demand filed in any Related Proceeding or Arbitration and any subsequent pleading or legal memorandum filed in any Related Proceeding or Arbitration; (iii) the Plan (including, without limitation, the selection, retention, and monitoring of Plan investments; any action or inaction by any Plan fiduciary; or the performance, fees, and any other characteristic of the Plan); (iv) the subject matter of or the proceedings in this Action, any Related Proceeding, or any Arbitration; and (v) the approval of the Independent Fiduciary of the Settlement.

- 4.6 Covenant Not to Sue by Defendants. Subject to Section 14, Defendants covenant and agree: (a) not to file against any Defendant Releasees, any Class Member, the Plan, Arbitration Counsel, Class Counsel, or *Canfield/Mendon* Counsel any of the Claims released by Section 4.5; and (b) that the foregoing covenant and agreement shall be a complete defense to any such Claims released by Section 4.5 against any Defendant Releasee, any Class Member, the Plan, Arbitration Counsel, Class Counsel, or *Canfield/Mendon* Counsel.
- 4.7 Arbitration Counsel Release. Subject to Section 14, upon the Effective Date of Settlement, each of the Arbitration Counsel absolutely and unconditionally releases and forever discharges each of the Defendant Releasees, each Class Member, the Plan, Class Counsel, *Canfield/Mendon* Counsel, and the Secretary from any and all Released Claims, accruing on or before the date the Court enters the Final Approval Order and Judgment, that Arbitration Counsel directly, indirectly, derivatively, or in any other capacity ever had or now have against any of the Defendant Releasees, any Class Member, the Plan, Class Counsel, *Canfield/Mendon* Counsel, and the Secretary. To avoid any doubt, the Released Claims include any and all Claims related to any attorneys' fees, expenses, and costs arising out of or in any way related to any Arbitrations, any Arbitration Awards, or any judgments issued by the U.S. District Court for the Western District of Missouri or by any court in favor of Arbitration Claimants or Arbitration Counsel, as well as any other claims for attorneys' fees and expenses arising out of or in any way related to the Released Claims.
- 4.8 Covenant Not to Sue by Arbitration Counsel. Subject to Section 14, Arbitration Counsel covenant and agree: (a) not to file against any Defendant Releasee, any Class Member, the Plan, Class Counsel, *Canfield/Mendon* Counsel, and the Secretary any of the Claims released by Section 4.7, or re-file any Claim brought in the Arbitrations, the *Canfield* Action, the *Mendon* Action, or in any action previously filed by any of the Arbitration Claimants against DST, the Advisory Committee, the Compensation Committee, RCG, and/or Goldfarb in the U.S. District Court for the Western District of Missouri or in any other forum; and (b) that the foregoing covenant and agreement shall be a complete defense to any such Claims released by Section 4.7 against any Defendant Releasee, any Class Member, the Plan, Class Counsel, *Canfield/Mendon* Counsel, and the Secretary.
- 4.9 *Canfield/Mendon* Counsel Release. Subject to Section 14, upon the Effective Date of Settlement, *Canfield/Mendon* Counsel absolutely and unconditionally releases and forever discharges each of the Defendant Releasees, each Class Member, the Plan, Class Counsel, Arbitration Counsel, and the Secretary from any and all Released Claims, accruing on or before the date the Court enters the Final Approval Order and Judgment, that

*Canfield/Mendon* Counsel directly, indirectly, derivatively, or in any other capacity ever had or now has against any of the Defendant Releasees, any Class Member, the Plan, Class Counsel, Arbitration Counsel, and the Secretary. To avoid any doubt, the Released Claims include any and all Claims related to any attorneys' fees, expenses, and costs arising out of or in any way related to the *Canfield* Action or the *Mendon* Action, as well as any other claims for attorneys' fees and expenses arising out of or in any way related to the Released Claims.

- 4.10 Covenant Not to Sue by *Canfield/Mendon* Counsel. Subject to Section 14, *Canfield/Mendon* Counsel covenant and agree: (a) not to file against any Defendant Releasee, any Class Member, the Plan, Class Counsel, Arbitration Counsel, or the Secretary any of the Claims released by Section 4.9, or re-file any Claim brought in the *Canfield* Action or the *Mendon* Action; and (b) that the foregoing covenant and agreement shall be a complete defense to any such Claims released by Section 4.9 against any Defendant Releasee, any Class Member, the Plan, Class Counsel, Arbitration Counsel, and the Secretary.
- 4.11 Claims Not Released. This Settlement Agreement does not in any way bar, limit, waive, or release any right by Plaintiffs to assert and/or recover any monies resulting from any individual claim to vested benefits that are otherwise due under the terms of the Plan.

## **5. SETTLEMENT ADMINISTRATOR**

- 5.1 As will be provided in the Preliminary Approval Order, the Settlement Administrator shall be appointed to implement the Settlement and Plan of Allocation contemplated by this Settlement Agreement. All Settlement Administration Expenses, including the Settlement Administrator's fees and expenses, will be paid from the Qualified Settlement Fund. The total charges by the Settlement Administrator shall not exceed \$500,000.00, without express leave of Court.

## **6. NONDISPARAGEMENT**

- 6.1 The Settling Parties, Arbitration Counsel, and *Canfield/Mendon* Counsel agree that they shall not make or publish intentionally any statement (in oral, written, electronic, or any other form) that would libel or slander any of the Plaintiff Releasers, Defendant Releasees, Arbitration Counsel, and/or *Canfield/Mendon* Counsel. Notwithstanding the foregoing and subject to the restrictions imposed by Section 7, there shall be no restriction on the Settling Parties' and their counsel's right, or Arbitration Counsel's or *Canfield/Mendon* Counsel's, right, to (i) publish information or statements about the Settlement in furtherance of the Settlement, (ii) disclose the existence of the Settlement on Class Counsel's, Defense Counsel's, Arbitration Counsel's, or *Canfield/Mendon* Counsel's websites or resumes or in court filings, or (iii) disclose the existence of the Settlement to tax or regulatory authorities or in connection with securities or other regulatory filings.

## **7. STATEMENTS TO THE PUBLIC**

- 7.1 The Settling Parties and their counsel, Arbitration Counsel, and *Canfield/Mendon* Counsel shall not voluntarily seek to publish information or statements about the Settlement, except

in judicial proceedings, posting the existence of the Settlement on Class Counsel's, Defense Counsel's, Arbitration Counsel's, or *Canfield/Mendon* Counsel's websites or resumes, or in connection with regulatory, tax, or financial filings or inquiries. If questioned about the Settlement other than in judicial proceedings, or by regulators (including self-regulatory agencies) or tax authorities, the Settling Parties and their counsel, Arbitration Counsel, and *Canfield/Mendon* Counsel agree to decline to answer, or to reply by stating that all claims have been resolved by agreement. The Settling Parties and their counsel, Arbitration Counsel, and *Canfield/Mendon* Counsel, except in furtherance of the Settlement, shall make no statements that express or imply that Defendants had any liability or culpability for matters in the Action, the Related Proceedings, or the Arbitrations. Nothing in this provision shall interfere with, restrict or impair in any respect either Class Counsel's right and ability to communicate with Class Members regarding this Action, the Related Proceedings, and the Settlement; Arbitration Counsel's right and ability to communicate with Arbitration Claimants regarding this Action, the Related Proceedings, and the Settlement; or *Canfield/Mendon* Counsel's right and ability to communication with the *Canfield/Mendon* Plaintiffs regarding this Action, the Related Proceedings, and the Settlement.

## **8. REPRESENTATIONS AND WARRANTIES**

- 8.1 No Assignment. The Secretary, Named Plaintiffs, Arbitration Counsel, and *Canfield/Mendon* Counsel represent and warrant that they have not assigned or otherwise transferred any interest in any Released Claims against Defendant Releasees, held by themselves or by their clients, whether in an individual, representative or any other capacity, and further covenant that they will not assign or otherwise transfer any interest in any Released Claims. Likewise, Defendants represent and warrant that they have not assigned or otherwise transferred any right or interest related to the Action, or any interest in any Released Claims against any Defendant Releasee, and that they will not assign or otherwise transfer any right or interest related to the Action, or any interest in any Released Claims against any Defendant Releasee.
- 8.2 No Surviving Claims of Named Plaintiffs, Arbitration Claimants, and *Canfield/Mendon* Plaintiffs. Named Plaintiffs, acting by and through Class Counsel, as well as Arbitration Counsel and *Canfield/Mendon* Counsel, after diligent inquiry, represent and warrant that they and/or their clients shall have no surviving Claim or cause of action against any Defendant Releasees arising from or in any way related to the Released Claims.
- 8.3 No Surviving Claims of the Secretary. The Secretary represents and warrants that the Secretary shall have no surviving Claim or cause of action against any Defendant Releasees arising from or in any way related to Claims the Secretary releases pursuant to Section 4.3.
- 8.4 Class Counsel represent and warrant that, to the best of their knowledge, there are no law firms or individuals other than Miller Shah LLP and Olivier & Schreiber LLP that have been retained or otherwise engaged, whether formally or informally, to represent the Named Plaintiffs and the class in the Action, and the plaintiffs in *Ferguson II* and the *Cooper* Action.

- 8.5 Arbitration Counsel represent and warrant that, to the best of their knowledge, there are no law firms or Persons other than Humphrey, Farrington & McClain; The Klamann Law Firm; Kapke & Willerth; and White, Graham, Buckley & Carr that have been retained or otherwise engaged, whether formally or informally, to represent any Class Member in any Arbitration, and that, to the best of their knowledge, there are no other law firms or Persons that could claim any entitlement to any attorneys' fees, expenses, and costs arising out of or in any way related to any Arbitrations, any Arbitration Awards, or any judgments issued by the U.S. District Court for the Western District of Missouri or by any court in favor of any of the Arbitration Claimants or Arbitration Counsel.
- 8.6 *Canfield/Mendon* Counsel represent and warrant that they have not been retained or otherwise engaged, whether formally or informally, to represent any Class Member other than Robert Canfield, Bonnie Kartz, Latrecia Onunkwor, Diana Weaver, David Ostermeyer, Mark Mendon, and Jill Pehlman in connection with any Claims or potential Claims arising out of or in any way related to the Plan, and that there are no other law firms or individuals that could claim any entitlement to any attorneys' fees, expenses, and costs in connection with representing any Class Member in the *Canfield* Action or the *Mendon* Action.
- 8.7 Voluntariness.
- 8.7.1 The Settling Parties, and with respect to the provisions of the Settlement Agreement applicable to them, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel, each represent and warrant that they are voluntarily entering into this Settlement Agreement as a result of arm's-length negotiations among their counsel; in executing this Settlement Agreement they are relying solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof; they are not relying upon and have not been influenced to any extent whatsoever in executing this Settlement Agreement by any representations, statements, or omissions pertaining to any of the foregoing matters by any other Settling Party or its representatives, or by the Secretary, Arbitration Counsel, or *Canfield/Mendon* Counsel; they knowingly waive any claim that this Settlement Agreement was induced by any misrepresentation or nondisclosure; and each Settling Party, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel assumes the risk of mistake as to facts or law.
- 8.7.2 The Settling Parties, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel each represent and warrant that they have carefully read the contents of this Settlement Agreement; they have made such investigation of the facts pertaining to the Settlement, this Settlement Agreement, and all of the matters pertaining thereto as they deem necessary; and this Settlement Agreement is signed freely by each Person executing this Settlement Agreement on behalf of each of the Settling Parties, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel.
- 8.8 Signatories' Authority. Each individual executing this Settlement Agreement on behalf of any other Person does hereby personally represent and warrant to the other Settling Parties,



the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel, that he or she has the authority to execute this Settlement Agreement on behalf of, and fully bind as to any applicable provisions, each principal that such individual represents or purports to represent.

## **9. USE AND EFFECT OF SETTLEMENT AGREEMENT**

- 9.1 The Settling Parties, and as to any provisions applicable to them, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel, understand and agree that this Settlement Agreement embodies a compromise and settlement of disputed claims, and that nothing in this Settlement Agreement, including the furnishing of consideration for this Settlement Agreement, or the fact or terms of this Settlement Agreement, shall be treated as an admission or denial or offered, introduced, or otherwise used in any action or proceeding for any purpose, except to enforce this Settlement Agreement and/or the Final Approval Order, including, without limitation, the Permanent Injunction contained therein.
- 9.2 The Settling Parties, Arbitration Counsel, and *Canfield/Mendon* Counsel agree that nothing in this Settlement Agreement has any effect on the June 2020 Settlement Agreement.

## **10. SETTLEMENT CONSIDERATION - THE QUALIFIED SETTLEMENT FUND**

- 10.1 Funding the Qualified Settlement Fund. No later than five (5) business days after the entry of the Preliminary Approval Order, Class Counsel shall: (a) establish at a Financial Institution through the Settlement Administrator an account (the “Escrow Account”) for the purpose of holding the Total Settlement Payment; and (b) provide notice to Defendants of the information needed to deposit the First Settlement Payment and Second Settlement Payment into the Escrow Account. Defendants shall transmit to the Financial Institution by check or wire transfer the amount of the First Settlement Payment within fifteen (15) business days from the later of: (a) entry of the Preliminary Approval Order by the Court; or (b) receipt from Class Counsel of the information needed to issue the First Settlement Payment and Second Settlement Payment (identity and address of the payee, W-9 form, and taxpayer identification number). Such amount shall, in the first instance, be used to pay the Independent Fiduciary Fees and Costs, CAFA Fees and Costs, and Settlement Administration expenses actually and reasonably incurred. Defendants shall transmit to the Financial Institution by check or wire transfer the amount of the Second Settlement Payment for deposit into the Escrow Account within twenty-five (25) calendar days after the later of the Effective Date of Settlement or the date any order with respect to attorneys’ fees and expenses and/or Case Contribution Award(s) is Final. In the event that the Final Approval Order and Judgment, or any order with respect to attorneys’ fees and expenses and Case Contribution Award(s), is reversed, including through some other proceeding, then the Total Settlement Payment, including any interest, less any administrative costs already incurred, shall be returned to Defendants.
- 10.2 The Escrow Account shall be governed by an escrow agreement entered into between Class Counsel and the Settlement Administrator. The monies in the Escrow Account shall be considered a Qualified Settlement Fund, described below. The Qualified Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction

of the Court until such time as the funds therein are distributed pursuant to this Settlement Agreement and/or further order(s) of the Court.

- 10.3 The Qualified Settlement Fund shall include and retain interest and income earned thereon, for the benefit of the Settlement Class, and shall be invested only in United States Treasury securities and/or securities of United States agencies backed by the full faith and credit of the United States Treasury with a maturity period not to exceed ninety (90) days, repurchase agreements collateralized by such securities, and mutual funds or money market accounts, provided that such funds or accounts invest exclusively in the foregoing securities.
- 10.4 The Settling Parties agree that the Qualified Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Section 468B of the Internal Revenue Code and Treasury regulations promulgated thereunder and that the Settlement Administrator shall structure and manage it as such. The Settlement Administrator shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate for the Qualified Settlement Fund. The Settlement Administrator also shall be solely responsible for causing payment to be made from the Qualified Settlement Fund of any Taxes owed with respect to the Qualified Settlement Fund. Defendant Releasees shall not have any liability or responsibility for any such Taxes. Upon written request, Defendants will provide to the Settlement Administrator the statement described in Treasury Regulation § 1.468B-3(e). The Settlement Administrator, as administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph.
- 10.5 The Settling Parties agree that the Qualified Settlement Fund shall be used to pay any and all: (a) Taxes; (b) Settlement Administration Expenses; (c) Case Contribution Award(s) awarded by the Court; (d) Independent Fiduciary Fees and Costs; (e) CAFA Fees and Costs; and (f) attorneys' fees and expenses awarded by the Court. Defendants shall have no responsibility for the administration of the Qualified Settlement Fund or for payment of any costs and/or expenses from the Qualified Settlement Fund referenced in items (a) through (f) of this Section 10.5. The balance remaining in the Qualified Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Class Members pursuant to the Plan of Allocation. If, however, the Settlement Agreement is terminated and rendered null and void for any reason, any unspent monies in the Qualified Settlement Fund (including all interest earned) shall be returned to DST, RCG, and Goldfarb in the manner described in Section 14.3.1.
- 10.6 Any tax returns prepared for the Qualified Settlement Fund (as well as the election set forth therein) shall reflect that all Taxes on the income earned by the Qualified Settlement Fund shall be paid out of the Qualified Settlement Fund as provided herein. Defendant Releasees, Plaintiff Releasers, Class Counsel, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel shall not have any responsibility or liability for the acts or omissions of the Settlement Administrator or its agents with respect to the payment of Taxes, as described herein.
- 10.7 Sole Monetary Contribution. With the exception of settlement payments previously made to certain of the Arbitration Claimants and/or the *Canfield/Mendon* Plaintiffs, including

payments made pursuant to the June 2020 Settlement Agreement, the Total Settlement Payment, plus the Civil Penalties, and, if applicable, the additional \$100,000.00 payment from DST to Arbitration Counsel described in Section 1.73, shall be the full and sole monetary contribution made by or on behalf of Defendant Releasees in connection with the Action, *Ferguson II*, the *Cooper* Action, the *Su* Action, the *Canfield* Action, the *Mendon* Action, the *DST* Action, Arbitrations involving Class Members, any action previously filed by any of the Arbitration Claimants against DST, the Advisory Committee, the Compensation Committee, Goldfarb, and/or RCG in the U.S. District Court for the Western District of Missouri or in any other forum, and the Settlement. The Total Settlement Payment, plus the Civil Penalties, and, if applicable, the additional \$100,000.00 payment from DST to Arbitration Counsel described in Section 1.73, specifically satisfy any and all claims for costs and attorneys' fees and any and all associated liens asserted by Class Counsel, Arbitration Counsel, *Canfield/Mendon* Counsel, or by any other counsel who claim any entitlement to fees in connection with representing Class Members in any proceeding arising out of or in any way related to the Released Claims; Case Contribution Award(s) to Named Plaintiffs; Civil Penalties; Settlement Administration Expenses; Independent Fiduciary Fees and Costs; CAFA Fees and Costs; and Taxes, in addition to any amounts to be distributed to Class Members pursuant to this Settlement Agreement. Except as set forth in Section 12, or as otherwise specified in this Settlement Agreement, the Settling Parties, the Secretary, Arbitration Counsel, *Canfield/Mendon* Counsel, and the *Su* DST Individual Defendants shall bear their own costs and expenses (including attorneys' fees) in connection with effectuating the Settlement and securing all necessary Court orders and approvals with respect to same.

## **11. DISPUTE RESOLUTION**

- 11.1 If the Settling Parties, and as to any provisions applicable to them, the Secretary, Arbitration Counsel, and/or *Canfield/Mendon* Counsel, disagree as to whether each and every condition set forth in Section 3 has been satisfied or waived, they shall promptly confer in good faith and, if unable to resolve their differences within five (5) business days thereafter, shall present their disputes for mediation to Robert A. Meyer, Esq. Any disputes not resolved through the mediation process shall be resolved by the Court. No portion of the Total Settlement Payment or Civil Penalties shall be paid (unless already paid) in the event of such a dispute until it is resolved.

## **12. SETTLEMENT ADMINISTRATOR; PAYMENT OF CLASS NOTICE AND SETTLEMENT ADMINISTRATION EXPENSES; PLAN OF ALLOCATION**

- 12.1 The Settlement Administrator shall discharge its duties under Class Counsel's supervision and subject to the jurisdiction of the Court. Defendant Releasees, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel shall have no responsibility whatsoever for the administration of the Settlement, and shall have no liability whatsoever to any Person, including, but not limited to, the Class Members or Class Counsel, in connection with any such administration or any actions of the Settlement Administrator. Class Counsel shall cause the Settlement Administrator to mail the Class Notice to all Participants in the Plan during the Class Period.

- 12.2 Following the deposit of the First Settlement Payment into the Escrow Account, Class Counsel may pay from the Qualified Settlement Fund, without further approval from Defendants or further order of the Court, all Settlement Administration Expenses actually and reasonably incurred, as well as Independent Fiduciary Fees and Costs and CAFA Fees and Costs. In the event that the Settlement is terminated pursuant to the terms of this Settlement Agreement, all Settlement Administration Expenses, Independent Fiduciary Fees and Costs, and CAFA Fees and Costs actually paid or incurred will not be returned or repaid to Defendants; however, any unspent monies in the Qualified Settlement Fund (including all interest earned) shall be returned to DST, RCG, and Goldfarb in the manner described in Section 14.3.1.
- 12.3 Except as provided in Sections 12.2 and 13, no distribution of any part, or all, of the Qualified Settlement Fund shall be made until the Financial Institution has received: (a) a notice signed by Class Counsel directing that the Qualified Settlement Fund be disbursed; or (b) a Court order, directing that the Qualified Settlement Fund be disbursed.
- 12.4 Plan of Allocation. The distribution of the Net Settlement Fund to the Class Members shall be made in accordance with the Plan of Allocation to be proposed by Class Counsel and approved by the Court. The *Ferguson* DST Defendants shall use their reasonable best efforts to cause the Plan's recordkeeper to provide reasonable and necessary data to the Settlement Administrator for purposes of carrying out the Plan of Allocation.
- 12.5 Prior to submission to the Court along with the Motion for Preliminary Approval of Settlement and of the Class Notice and Summary Notice, Plaintiffs shall confer with Defendants and the Secretary regarding the Plan of Allocation.
- 12.6 Any and all expenses of the implementation of the Settlement and of the Plan of Allocation shall be paid from the Qualified Settlement Fund.
- 12.7 The Plan of Allocation is a matter separate and apart from the Settlement, and no decision by the Court concerning the Plan of Allocation shall affect the validity of the Settlement or finality of the proposed Settlement in any manner, except as provided in Section 14.2.2.
- 12.8 The Settlement Administrator shall be responsible for implementing the Plan of Allocation and distributing the Net Settlement Fund to Class Members pursuant to the approved Plan of Allocation and any related order of the Court. The Settlement Administrator shall be exclusively responsible and liable for calculating the amounts payable to Class Members, except to the extent any liability or Claims related to the calculation of amounts payable arise from inaccurate or incomplete data provided to the Settlement Administrator. The Settlement Administrator shall send a spreadsheet showing its calculations to Class Counsel, Defense Counsel, Arbitration Counsel, and the Secretary at least ten (10) business days before any distribution is made for comment and review. The Settlement Administrator shall provide to Class Counsel and Defense Counsel the necessary information for payment of the Second Settlement Payment within fourteen (14) business days after the issuance of the Final Approval Order.
- 12.9 None of Defendants, Class Counsel, the Secretary, Arbitration Counsel, or *Canfield/Mendon* Counsel shall have any responsibility or liability for determining,

administering, or calculating the amounts payable to the members of the Settlement Class. Nor shall Defendants, Class Counsel, the Secretary, Arbitration Counsel, or *Canfield/Mendon* Counsel have any responsibility or liability for investing or distributing the Net Settlement Fund to Class Members; the payment or withholding of Taxes; or any losses incurred in connection with such matters.

- 12.10 In the event that Defendants, Class Counsel, and/or Arbitration Counsel determine that it is necessary to modify the Plan of Allocation, Class Counsel, Defendants, the Secretary, and Arbitration Counsel shall jointly discuss each such modification and determine whether the modification is reasonable and appropriate under the circumstances. To the extent Class Counsel, Defendants, the Secretary, and Arbitration Counsel are unable to reach agreement as to a reasonable and appropriate modification, they shall resolve their dispute in the manner set forth in Section 11.1. The Settling Parties, the Secretary, and Arbitration Counsel will jointly petition the Court for approval of any such material modification.
- 12.11 All inquiries by Class Members concerning the amount distributed to a particular Class Member shall be handled in the first instance by Class Counsel or the Settlement Administrator. Arbitration Counsel shall be informed and consulted concerning any such inquiry by an Arbitration Claimant, provided that Arbitration Counsel provides to Class Counsel and the Settlement Administrator in advance all information necessary to identify each of the Arbitration Claimants. Class Counsel, Arbitration Counsel, and/or Defendants, as appropriate under this provision, shall work cooperatively to resolve any such inquiries.
- 12.12 If there is any balance remaining in the Net Settlement Fund after the Settlement Administrator's distribution of the Net Settlement Fund to Class Members (whether by reason of tax refunds, uncashed checks, or otherwise), the Settling Parties and the Secretary shall submit an additional distribution plan to the Court for approval.

### **13. ATTORNEYS' FEES AND EXPENSES; CASE CONTRIBUTION AWARDS; CIVIL PENALTIES; AND CLASS MEMBER PAYMENTS**

- 13.1 Application for Fees, Expenses and Case Contribution Award(s). Class Counsel, Arbitration Counsel, *Canfield/Mendon* Counsel, or any other counsel who claim any entitlement to fees in connection with representing Class Members in any proceeding arising out of or in any way related to the Released Claims, shall petition the Court no later than twenty (20) days prior to the Fairness Hearing for an award of attorneys' fees and/or approval of Case Contribution Award(s), and for reimbursement of expenses, to be paid from the Qualified Settlement Fund. The Case Contribution Award(s) and any attorneys' fees and expenses awarded by the Court shall be paid solely from the Qualified Settlement Fund.
  - 13.1.1 Defendants, Arbitration Counsel, *Canfield/Mendon* Counsel, and the Secretary expressly agree not to contest or take any position with respect to any application for attorneys' fees and expenses incurred by Class Counsel with respect to this Settlement not to exceed \$9,500,000.00. Class Counsel agree not to seek an award of more than \$9,500,000.00 in attorneys' fees and expenses.

- 13.1.2 Defendants, Class Counsel, *Canfield/Mendon* Counsel, and the Secretary expressly agree not to contest or take any position with respect to any application for attorneys' fees and expenses incurred by Arbitration Counsel with respect to this Settlement not to exceed \$15,500,000.00. Arbitration Counsel agree not to seek an award of more than \$15,500,000.00 in attorneys' fees and expenses.
- 13.1.3 Defendants, Class Counsel, Arbitration Counsel, and the Secretary expressly agree not to contest or take any position with respect to any application for attorneys' fees and expenses incurred by *Canfield/Mendon* Counsel with respect to this Settlement not to exceed \$250,000.00, \$125,000.00 of which will be funded by Arbitration Counsel through a deduction in that amount from Arbitration Counsel's Attorneys' Fees and Expenses, with the remaining \$125,000.00 to be paid by DST as part of the Second DST Settlement Payment. *Canfield/Mendon* Counsel agree not to seek an award of more than \$250,000.00 in attorneys' fees and expenses.
- 13.1.4 The Settling Parties, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel reserve all rights to object to any application for attorneys' fees and expenses other than those listed in this Section 13. Defendants, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel also expressly agree to take no position with respect to the Case Contribution Award(s), except that Defendants, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel reserve all rights to object to any application for Case Contribution Award(s) in excess of \$75,000.00 in total. The Settling Parties, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel expressly agree that the Court's disposition of Case Contribution Award(s) and attorneys' fees and expenses will not be a reason to terminate the Settlement, except with respect to Arbitration Counsel's Attorneys' Fees and Expenses as set forth in Section 14.2.1.
- 13.2 Disbursement of Fees and Expenses. Attorneys' fees and expenses as awarded by the Court shall be payable to counsel who receive such awards from the Qualified Settlement Fund within thirty (30) calendar days after the later of the Effective Date of Settlement or the date any order with respect to attorneys' fees and expenses and Case Contribution Award(s) is Final.
- 13.3 Disbursement of Case Contribution Award(s). The Case Contribution Award(s) shall be payable from the Qualified Settlement Fund following the deposit of the Second Settlement Payment into the Escrow Account and shall be in addition to any portion of the Net Settlement Fund the Named Plaintiffs would otherwise be entitled to receive as Class Members.
- 13.4 Pursuant to the terms of this Agreement, Defendants shall be assessed, as of the Effective Date of Settlement, the Civil Penalties, and Defendants shall remit the Civil Penalties to the Secretary, by sending a certified or cashier's check to one of the addresses in this Section, within thirty (30) days after the Effective Date of Settlement. The Secretary has agreed to compromise and reduce the amount of the Civil Penalties to be assessed as of the Effective Date of Settlement, and does and will accept, as a full satisfaction of the assessed Civil Penalties, the amount of Nine Million, Forty-Five Thousand, Four Hundred Fifty-Five Dollars and Zero Cents (\$9,045,455.00). Each of DST, Goldfarb, and Ruane shall

pay its portion of the Civil Penalties separately, in the amounts specified by Sections 1.73, 1.74, and 1.75, and none of the Defendants shall have any liability for the portions to be paid by any of the other Defendants.

Defendants hereby waive the notice of assessment and service requirement of 29 C.F.R. § 2570.83, and, as of the Effective Date of Settlement, waive all legal rights to appeal, contest, or seek a reduction of the Civil Penalties.

Standard (Regular U.S. Mail) Remittance Address:

ERISA Civil Penalty  
P.O. Box 6200-36  
Portland, OR 97228-6200

or

Express Mail or Commercial Overnight Delivery Address:

U.S. Bank  
Attn: ERISA Civil Penalty #6200-36  
17650 NE Sandy Blvd.  
PD-OR-CIGL  
Portland, OR 97230

The certified or cashier's check for the Civil Penalties shall be made payable to the United States Department of Labor and must reference EBSA Case No. 60-107481. Defendants will provide notice to the Secretary of this payment, including the date and the manner in which the Civil Penalties have been paid.

- 13.5 No later than ninety (90) calendar days after the Effective Date of Settlement (but in no event earlier than the Effective Date of Settlement), all other payments required under this Agreement, including payments to Class Members, any Case Contribution Award(s), and any unpaid Settlement Administration Expenses, shall be issued or reimbursed.
- 13.6 The Defendant Releasees shall have no responsibility for, and no liability whatsoever with respect to, any payment(s) to Class Counsel, Arbitration Counsel, *Canfield/Mendon* Counsel, or any other counsel of attorneys' fees and expenses or any Case Contribution Award(s), and/or to any other Person who may assert some claim thereto.

**14. TERMINATION OF THE SETTLEMENT AGREEMENT**

- 14.1 Termination by Defendants. Any of the Defendants may terminate this Settlement Agreement if, after the filing of the Motion for Preliminary Approval of Settlement and of the Class Notice and Summary Notice, and before the Court enters the Final Approval Order, that Defendant is caused by a court order to pay any amount to any Class Member(s) arising out of or in any way related to the Released Claims. In the event any Defendant intends to exercise its right to terminate the Settlement Agreement pursuant to this Section 14.1, Defendant(s) shall provide written notice to Class Counsel, Arbitration Counsel, *Canfield/Mendon* Counsel, and the Secretary disclosing their intention to terminate, and such termination will become effective ten (10) days after such notice is provided if the

Settling Parties, Arbitration Counsel, *Canfield/Mendon* Counsel, and the Secretary fail to agree in the interim to nevertheless proceed with this Settlement.

14.2 Automatic Termination. This Settlement Agreement shall automatically terminate, and thereupon become null and void, in the following circumstances:

14.2.1 If the Court approves Arbitration Counsel's Attorneys' Fees and Expenses in an amount lower than \$15,500,000.00, and if within ten (10) days after the date of any such ruling Arbitration Counsel have not agreed in writing to proceed with the Settlement Agreement, then this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the tenth day after issuance of the order referenced in this Section 14.2.1.

14.2.2 If the Court issues an order modifying the Plan of Allocation in a way that reduces the settlement payment due to any Arbitration Claimant, and if within ten (10) days after the date of any such ruling Arbitration Counsel have not agreed in writing to proceed with the Settlement Agreement, then this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the tenth day after issuance of the order referenced in this Section 14.2.2.

14.2.3 If the Court issues an order in the Action modifying the Settlement Agreement, except as described in Sections 14.2.1 and/or 14.2.2, and if within thirty-one (31) days after the date of any such ruling the Settling Parties, and as to any provisions applicable to them, the Secretary, Arbitration Counsel, and/or *Canfield/Mendon* Counsel, have not agreed in writing to proceed with all or part of the Settlement Agreement as modified by the Court or by the Settling Parties, the Secretary, Arbitration Counsel, and/or *Canfield/Mendon* Counsel, then, provided that no appeal is then pending from such ruling, this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the thirty-first day after issuance of the order referenced in this Section.

14.2.4 If the Court declines to approve the Settlement, the Settling Parties, and as to any provisions applicable to them, the Secretary, Arbitration Counsel, and/or *Canfield/Mendon* Counsel, shall negotiate in good faith to cure any deficiency or term(s) identified by the Court. If the Settling Parties, and as to any provisions applicable to them, the Secretary, Arbitration Counsel, and/or *Canfield/Mendon* Counsel, do not modify the Settlement Agreement by mutual written agreement, Defendants agree that this Settlement Agreement is not terminated so long as any one or more of the Settling Parties, the Secretary, *Canfield/Mendon* Plaintiffs, *Canfield/Mendon* Counsel, Arbitration Claimants, and/or Arbitration Counsel timely appeals and/or petitions the appeals court for review. Defendants agree not to oppose any appeal by the Settling Parties, the Secretary, *Canfield/Mendon* Plaintiffs, *Canfield/Mendon* Counsel, Arbitration Counsel, and/or Arbitration Claimants of the Court's or any appellate court's decision(s), any petition for writ of certiorari to the Supreme Court of the United States, or any substantive filings made by the Settling Parties, the Secretary, *Canfield/Mendon* Plaintiffs, *Canfield/Mendon* Counsel, Arbitration Counsel, and/or Arbitration Claimants



within the Supreme Court docket where certiorari is accepted, to have the Settlement finally approved.

- 14.2.5 If the United States Court of Appeals for the Second Circuit reverses the Court's order approving the Settlement, and if within ninety-one (91) days after the date of any such ruling the Settling Parties, and as to any provisions applicable to them, the Secretary, Arbitration Counsel, and/or *Canfield/Mendon* Counsel, have not agreed in writing to proceed with all or part of the Settlement as modified by the Second Circuit or by the Settling Parties, the Secretary, Arbitration Counsel, and/or *Canfield/Mendon* Counsel, then, provided that no appeal or petition for writ of certiorari to the Supreme Court is then pending from such ruling, this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the ninety-first day after issuance of the Second Circuit order referenced in this Section.
- 14.2.6 If the Supreme Court of the United States reverses or remands a Second Circuit order approving the Settlement, and if within thirty-one (31) days after the date of any such ruling the Settling Parties, and as to any provisions applicable to them, the Secretary, Arbitration Counsel, and/or *Canfield/Mendon* Counsel have not agreed in writing to proceed with all or part of the Settlement Agreement as modified by the Supreme Court or by the Settling Parties, the Secretary, Arbitration Counsel, and/or *Canfield/Mendon* Counsel, then this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the thirty-first day after issuance of the U.S. Supreme Court order referenced in this Section.
- 14.2.7 If a Court order declining to approve the Settlement otherwise becomes Final, then this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the date that any such order becomes Final.
- 14.3 Consequences of Termination of the Settlement Agreement. If the Settlement Agreement is terminated and rendered null and void for any reason, the following shall occur.
  - 14.3.1 Within three (3) days after the date of termination of the Settlement Agreement, Class Counsel shall notify the Settlement Administrator in writing to return to the Defendants any unspent monies in the Qualified Settlement Fund (including all interest earned), and direct the Settlement Administrator to effect such return as soon as possible. Any unspent monies in the Qualified Settlement Fund (including all interest earned) shall be returned to DST, RCG, and Goldfarb in the same proportion as each of them funded the Total Settlement Payment. The Escrow Agent or its designee shall apply for any tax refund owed to the Qualified Settlement Fund and pay the proceeds to DST, RCG, and Goldfarb in the same proportion as each of them funded the Total Settlement Payment, after deduction of any fees or expenses reasonably incurred in connection with such applications(s) for a tax refund.
  - 14.3.2 The Action shall for all purposes with respect to the Settling Parties revert to its status as of October 31, 2022, and the actions pending between DST and Arbitration Claimants will revert to their status as of May 8, 2023. The *Su* Action shall for all

purposes with respect to the Secretary, Defendants, and the *Su* DST Individual Defendants revert to its status as of October 31, 2022.

14.3.3 All Releases given or executed pursuant to the Settlement Agreement shall be null and void; none of the terms of the Settlement Agreement shall be effective or enforceable, except those provisions providing for reimbursement of the unspent monies in the Qualified Settlement Fund as set forth in Section 14.3.1 and the provisions in Section 9 providing that neither the fact nor the terms of the Settlement Agreement shall be offered or received in evidence in this Action or in any other action or proceeding for any purpose, except in an action or proceeding arising under this Settlement Agreement.

## **15. MISCELLANEOUS PROVISIONS**

- 15.1 Stays of Certain Actions. Reasonably promptly after the signing of this Settlement Agreement, the Settling Parties, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel shall use their best efforts to obtain a stay of this Action, the *Cooper* Action, the *Su* Action, the *DST* Action, *Ferguson II*, and any actions pending between or among any of the Settling Parties, Arbitration Claimants, and/or the *Canfield/Mendon* Plaintiffs in the Second Circuit or Eighth Circuit Courts of Appeals or the U.S. District Court for the Western District of Missouri, pending the Court's decision as to whether preliminarily and finally to approve the Settlement. Further, the Settling Parties, Arbitration Counsel, *Canfield/Mendon* Counsel, and the Secretary shall not seek discovery in the actions described in this provision except for the purposes of seeking Court approval of the Settlement Agreement.
- 15.2 Jurisdiction. The Court shall retain jurisdiction over this Action, the Settling Parties, and the Settlement Class, subject to certain reservations and exceptions below, to resolve any dispute or issue of enforcement relating to this Settlement Agreement and the orders and notices referenced in Section 3, including, but not limited to, the Permanent Injunction and issues regarding validity, performance, interpretation, administration, enforcement, enforceability, or termination of the Settlement Agreement. The Final Approval Order shall expressly retain jurisdiction as set forth in this Section. However, all parties agree that, while the Southern District of New York must review the Settlement Agreement, and its preliminary and final approval is a condition to the effectiveness of the Settlement Agreement, no party will argue that the act of participating in the Settlement constitutes a waiver of Arbitration Claimants' position that the U.S. District Court for the Western District of Missouri retains jurisdiction over the Arbitration Claimants, Arbitration Counsel, and the Arbitration Awards and/or judgments (whether confirmed or not) until such time as the Settlement Agreement becomes Final. No party hereto will argue that Arbitration Claimants' participation in the Settlement or execution of the Settlement Agreement constitutes a submission to the jurisdiction of the U.S. District Court for the Southern District of New York until such time as the Settlement Agreement becomes Final; *provided, however*, that Arbitration Claimants and Arbitration Counsel shall not contest the jurisdiction of the U.S. District Court for the Southern District of New York to review and approve the Settlement Agreement or contest jurisdiction in connection with any appeal from that Court's approval of the Settlement Agreement.

- 15.3 DST and Arbitration Counsel agree that, upon execution of this Settlement Agreement by Arbitration Counsel with respect to the provisions applicable to them, DST may enter into and effectuate this Settlement Agreement consistent with the injunction entered by the U.S. District Court for the Western District of Missouri on April 10, 2023 in 55 actions filed by Arbitration Counsel in that court. DST and Arbitration Counsel further agree that the prior orders and judgments of the U.S. District Court for the Western District of Missouri are entitled to whatever effect they may otherwise have except to the extent they are extinguished, satisfied, or otherwise modified by the Settlement Agreement or upon the Settlement Agreement becoming Final.
- 15.4 **Governing Law.** This Settlement Agreement shall be governed by the laws of the United States, including federal common law, except to the extent that, as a matter of federal law, state law controls, in which case New York State Law will apply without regard to conflict of law principles.
- 15.5 **Severability.** The provisions of this Settlement Agreement are not severable.
- 15.6 **Amendment.** Before entry of a Final Approval Order, this Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Settling Parties, and, if the modification or amendment concerns a provision binding the Secretary, signed by or on behalf of the Secretary; and, if the modification or amendment concerns a provision affecting the Arbitration Claimants or Arbitration Counsel, signed by Arbitration Counsel; and, if the modification or amendment concerns a provision affecting the *Canfield/Mendon* Plaintiffs or *Canfield/Mendon* Counsel, signed by *Canfield/Mendon* Counsel. Following entry of a Final Approval Order, this Settlement Agreement may be modified or amended only by written agreement signed on behalf of all Settling Parties, and, if the modification or amendment concerns a provision binding the Secretary, signed by or on behalf of the Secretary; and, if the modification or amendment concerns a provision affecting the Arbitration Claimants or Arbitration Counsel, signed by Arbitration Counsel; and, if the modification or amendment concerns a provision affecting the *Canfield/Mendon* Plaintiffs or *Canfield/Mendon* Counsel, signed by *Canfield/Mendon* Counsel, and approved by the Court.
- 15.7 **Waiver.** The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this Settlement Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.
- 15.8 **Construction.** None of the Settling Parties, the Secretary, Arbitration Counsel, or *Canfield/Mendon* Counsel shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.
- 15.9 **Principles of Interpretation.** The following principles of interpretation apply to this Settlement Agreement:

- 15.9.1 Headings. The headings of this Settlement Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Settlement Agreement.
- 15.9.2 Singular and Plural. Definitions apply to the singular and plural forms of each term defined.
- 15.9.3 Gender. Definitions apply to the masculine, feminine, and neuter genders of each term defined.
- 15.9.4 References to a Person. References to a Person are also to the Person's permitted successors and assigns.
- 15.9.5 Terms of Inclusion. Whenever the words "include," "includes" or "including" are used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."
- 15.9.6 Unless the context requires otherwise, (1) any definition of or reference to any agreement, instrument, or other document (including this Settlement Agreement) shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications set forth herein or in any such agreement, instrument, or other document), (2) the words "hereto," "herein," "hereof" and "hereunder," and words of similar import when used herein, shall be construed to refer to this Settlement Agreement in its entirety and not to any particular provision thereof, (3) all references herein to Sections and Exhibits shall be construed to refer to Sections of and Exhibits to this Settlement Agreement, and (4) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing, or interpreting such law, and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified, or supplemented from time to time.
- 15.9.7 In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding"; and the word "through" means "to and including."
- 15.10 Further Assurances. Each of the Settling Parties, and as to any provisions applicable to them, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel, agree, without further consideration, and as part of finalizing the Settlement hereunder, that they will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this Settlement Agreement.
- 15.11 Survival. All representations, warranties and covenants set forth in this Settlement Agreement shall be deemed continuing and shall survive the Effective Date of Settlement.
- 15.12 Notices. Any notice, demand or other communication under this Settlement Agreement (other than notices to Class Members) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and

personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed facsimile, or delivered by reputable express overnight courier, with a copy sent by email:

IF TO NAMED PLAINTIFFS: James E. Miller  
Laurie Rubinow  
Miller Shah LLP  
65 Main Street  
Chester, CT 06412  
Telephone: (860) 526-1100  
Facsimile: (866) 300-7367  
jemiller@millershah.com  
lrubinow@millershah.com

IF TO THE SECRETARY: Robert L. Furst  
Alyssa C. George  
Isidro Mariscal  
U.S. Department of Labor  
Office of the Solicitor  
Plan Benefits Security Division  
P.O. Box 1914  
Washington, D.C. 20013  
Telephone: (202) 693-5600  
Facsimile: (202) 693-5610  
furst.robert@dol.gov  
george.alyssa.c@dol.gov  
mariscal.isidro@dol.gov

Michael R. Hartman  
Amy Tai  
U.S. Department of Labor  
Office of the Solicitor  
New York Regional Solicitor's Office  
201 Varick Street  
Room 983  
New York, New York 10014  
hartman.michael@dol.gov  
tai.amy@dol.gov

IF TO THE *Ferguson* DST  
DEFENDANTS: Lewis R. Clayton  
Jeffrey J. Recher  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Telephone: (212) 373-3000  
Facsimile: (212) 757-3990  
lclayton@paulweiss.com

jrecher@paulweiss.com

IF TO RCG:

Gregory F. Jacob  
O'Melveny & Myers LLP  
1625 Eye Street, NW  
Washington, DC 20006  
Telephone: (202) 383-5110  
Facsimile: (202) 383-5414  
gjacob@omm.com

IF TO GOLDFARB:

Myron D. Rumeld  
Proskauer Rose LLP  
Eleven Times Square  
New York, NY 10036  
Telephone: (212) 969-3021  
Facsimile: (212) 969-2900  
mrumeld@proskauer.com

IF TO ARBITRATION  
COUNSEL:

Kenneth B. McClain  
Humphrey, Farrington & McClain  
221 West Lexington, Suite 400  
P.O. Box 900  
Independence, Missouri 64051  
Telephone: (816) 836-5050

IF TO *CANFIELD/MENDON*  
COUNSEL:

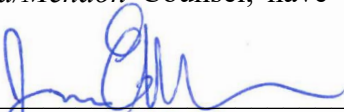
Joshua B. Katz  
Kent, Beatty & Gordon, LLP  
Eleven Times Square  
New York, New York 10036  
Telephone: (212) 421-4300

Any party may change the address at which it is to receive notice by written notice delivered to the other Settling Parties, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel in the manner described above.

15.13 Entire Agreement. This Settlement Agreement, including the Joint Stipulation of Settlement and Release of Claims to be filed in the *Su* Action pursuant to Section 3.5.1, contains the entire agreement among the Settling Parties, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel relating to this Settlement. No representations, agreements, understandings, or inducements (whether written, unwritten, verbal, or otherwise) shall affect the construction or enforcement of this Settlement Agreement (including all claims released herein), it being agreed that the rights of the Settling Parties, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel against any opposing party hereto shall be governed exclusively by this Settlement Agreement.

- 15.14 Counterparts. This Settlement Agreement may be executed by exchange of faxed or scanned executed signature pages, and any signature transmitted by facsimile or by email attachment for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.
- 15.15 Binding Effect. This Settlement Agreement binds and inures to the benefit of the Settling Parties, and as to certain provisions applicable to them, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel, as well as their assigns, heirs, administrators, executors, and Successors-in-Interest.

IN WITNESS HERETO, the Settling Parties, and as to certain provisions applicable to them, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel, have executed this Settlement Agreement on the dates set forth below.



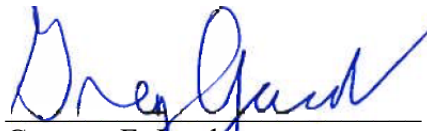
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lrubinow@millershah.com

*Attorneys for Named Plaintiffs and Settlement Class*

Dated: 7/14/2023





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*Attorney for RCG*

Dated: July 14, 2023



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Dated: July 14, 2023



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Dated: 7/14/2023



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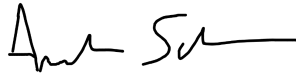
*Attorneys for the Secretary*

Dated: *July 14, 2023*



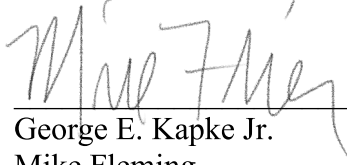
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Telephone: (816) 373-9080

*Arbitration Counsel*

Dated: July 14, 2023



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New York, New York 10036  
Telephone: (212) 421-4300

*Canfield/Mendon Counsel*

Dated: July 14, 2023

# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**If you were or are a participant in the DST Systems, Inc. 401(k) Profit Sharing Plan, your legal rights will be affected by this class action settlement.**

**The case is called *Ferguson, et al. v. Ruane, Cunniff & Goldfarb Inc., et al.*, No. 1:17-cv-06685-ALC-BCM (S.D.N.Y.). A Court authorized this Class Notice. This is not a solicitation from a lawyer.**

This Class Notice advises you of a settlement (“Settlement”) of claims involving a lawsuit against Ruane, Cunniff & Goldfarb Inc. (“RCG”), as well as DST Systems, Inc. (“DST”), the Advisory Committee of the DST Systems, Inc. 401(k) Profit Sharing Plan (the “Advisory Committee”), and the Compensation Committee of the Board of Directors of DST Systems, Inc. (the “Compensation Committee, and together with DST Systems, Inc. and the Advisory Committee, the “*Ferguson* DST Defendants”), brought by Plaintiffs Michael L. Ferguson, Myrl C. Jeffcoat and Deborah Smith (collectively, “Named Plaintiffs”), individually and as representatives of a class of similarly situated participants and beneficiaries, and on behalf of the DST Systems, Inc. 401(k) Profit Sharing Plan (the “Plan”). In the lawsuit, Named Plaintiffs allege that, among other things, the *Ferguson* DST Defendants and RCG are fiduciaries of the Plan and violated the Employee Retirement Income Security Act of 1974 (“ERISA”) by, among other things, investing an inappropriate amount of the Plan’s assets in the stock of Valeant Pharmaceuticals (“VRX”), failing to timely reduce and/or eliminate the Plan’s investments in VRX. The United States Department of Labor (“DOL”) also filed a related litigation against these Defendants, as well as against Robert D. Goldfarb (“Goldfarb”), alleging ERISA violations arising out of the management of the Plan. This Class Notice relates to a Settlement that the Named Plaintiffs and the DOL reached with the Defendants and Goldfarb.

You should read this entire Class Notice carefully because your legal rights will be affected by whether you act or not. As a Class Member, you are currently enjoined from litigating in any action or proceeding other than the *Ferguson* class action any claims against the *Ferguson* DST Defendants arising out of or related to the allegations asserted in the *Ferguson* class action. Additionally, if the Settlement explained in this Class Notice is approved by the Court, you will not be able to separately prosecute against any of the Defendants any claims that relate in any way to the practices, facts and/or events at issue in this lawsuit or in any related lawsuits or arbitrations regarding the Plan. Your rights and options, and the deadline for you to object if you are opposed to the Settlement, are explained in this Class Notice.



**WHAT THIS CLASS NOTICE CONTAINS**

**BASIC INFORMATION..... 1**

- 1. Why did I get this Class Notice? .....1
- 2. What is this lawsuit about?.....1
- 3. What is a class action lawsuit? .....1
- 4. Why is there a settlement?.....2
- 5. How do I get more information about the Settlement?.....2
- 6. Who will administer the Settlement? .....2

**THE SETTLEMENT BENEFITS – WHAT DOES THE SETTLEMENT PROVIDE..... 2**

- 7. What does the Settlement provide? .....2
- 8. What are the Named Plaintiffs receiving from the Settlement? .....3
- 9. How may I benefit from the Settlement?.....3
- 10. How will I receive my Settlement Payment? .....3

**THE SETTLEMENT BENEFITS – WHAT YOU GIVE UP..... 4**

- 11. What do I give up by participating in the Settlement? .....4

**THE LAWYERS REPRESENTING YOU ..... 5**

- 12. Do I have a lawyer in this case? .....5
- 13. How will the lawyers (Class Counsel and other counsel) be paid? .....5

**OPTING OUT OF THE SETTLEMENT ..... 5**

- 14. Can I exclude myself from the Class? .....5

**OBJECTING TO THE SETTLEMENT ..... 5**

- 15. What does it mean to object? .....5
- 16. What is the procedure for objecting to the Settlement, including objecting to motions for attorneys’ fees and expenses or Case Contribution Awards? .....6

**THE COURT’S FAIRNESS HEARING ..... 7**

- 17. When/where will the Court decide whether to approve the Settlement?.....7
- 18. Do I have to attend the Fairness Hearing?.....7
- 19. May I speak at the Fairness Hearing?.....7

**IF YOU DO NOTHING ..... 8**

- 20. What happens if I do nothing at all?.....8

## BASIC INFORMATION

### 1. Why did I get this Class Notice?

You have been identified as a Participant, Former Participant, Beneficiary, or Alternate Payee of the Plan at some time on or after March 14, 2010 through July 31, 2016 (the “Class Period”).

You are receiving this Class Notice because you have a right to know about the proposed Settlement of a class action lawsuit in which you are a Class Member before the Court decides whether to approve the Settlement.

This Class Notice summarizes the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The lawsuit is pending in the United States District Court for the Southern District of New York (the “Court”). It is known as *Ferguson, et al. v. Ruane, Cunniff & Goldfarb Inc., et al.*, No. 1:17-cv-06685-ALC-BCM (S.D.N.Y.), and is brought against RCG and the *Ferguson* DST Defendants. Related cases have been brought against Goldfarb.

### 2. What is this lawsuit about?

On September 1, 2017, Named Plaintiffs filed an action against RCG and the *Ferguson* DST Defendants alleging that, while serving as fiduciaries of the Plan, they violated ERISA by, among other things, investing an inappropriate amount of the Plan’s assets in the stock of VRX, failing to timely reduce and/or eliminate the Plan’s investments in VRX, and, in the case of the *Ferguson* DST Defendants, failing to adequately monitor the fiduciaries managing the Plan’s investments. In October 2019, the DOL filed suit against Defendants and Goldfarb, in which it alleged that certain Plan fiduciaries breached their fiduciary duties owed to Plan participants and beneficiaries by, among other things, investing the Plan’s assets in an inappropriately non-diversified manner, failing to timely rebalance the Plan’s investments, failed to adequately monitor the investments made on behalf of the Plan, and failing to establish a written investment policy as required by the Plan document. In February 2023, the Named Plaintiffs, the Defendants, Goldfarb and the DOL (the “Parties”) negotiated a resolution of the disputed claims and ultimately were able to reach the terms of the Settlement explained in this Class Notice. The Defendants and Goldfarb would continue to vigorously defend the lawsuits if the proposed Settlement is not approved.

The Class in this case includes all Participants, Former Participants, Beneficiaries or Alternate Payees of the Plan during the Class Period, except: (i) all individuals who were members of the Advisory Committee during the Class Period; (ii) all individuals who were members of the Compensation Committee during the Class Period; (iii) any other individuals who served as fiduciaries of the Plan during the Class Period; and (iv) the beneficiaries, immediate family members, estates, and executors of (i)–(iii). The specific individuals excluded from the Settlement Class as members of (i)–(iii) are listed in Exhibit G to the Settlement Agreement.

### 3. What is a class action lawsuit?

In a class action lawsuit, one or more people called “class representatives” sue on their own behalf and on behalf of other people who they allege may have similar claims. One court resolves all the

issues for all class members in a single lawsuit. Named Plaintiffs are the class representatives in this lawsuit, and are sometimes referred to in this Class Notice as the “Class Representatives” or as the “Named Plaintiffs.”

**4. Why is there a settlement?**

The Parties have agreed to the Settlement after extensive negotiations. The Court has not made any finding that the Defendants have done anything wrong or violated any law or regulation. By agreeing to a Settlement, the Parties avoid the costs and risks of further litigation, and Named Plaintiffs and the other members of the Class will get compensation. Class Counsel have conducted an extensive review of the evidence in the case and the potential risks and benefits of continued litigation. Named Plaintiffs and Class Counsel agree that the Settlement is in the best interest of the Class.

**5. How do I get more information about the Settlement?**

This Class Notice summarizes the proposed Settlement. You can get more information about the Settlement, including the precise terms and conditions of the Settlement, by accessing the Settlement Agreement available at [www.strategicclaims.net/dst](http://www.strategicclaims.net/dst), by contacting Class Counsel (*see* page 7 for contact information) or the Settlement Administrator (*see* answer to question 6 for contact information), by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.nysd.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007, between 8:30 a.m. and 5:00 p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

**6. Who will administer the Settlement?**

The Settlement Administrator, Strategic Claims Services, will administer the Settlement, including the processing of the Former Participant Rollover Form, if applicable, that you may want to submit to receive your Settlement Payment through a rollover to a qualified retirement account. You may contact the Settlement Administrator by: (a) sending a letter to DST Settlement Administrator, c/o Strategic Claims Services, 600 N. Jackson St. #205, Media, PA 19063; (b) sending an e-mail to [info@strategicclaims.net](mailto:info@strategicclaims.net); (c) visiting the Settlement website at [www.strategicclaims.net/dst](http://www.strategicclaims.net/dst); or (d) calling toll-free at (866) 274-4004.

**THE SETTLEMENT BENEFITS – WHAT DOES THE SETTLEMENT PROVIDE**

**7. What does the Settlement provide?**

The Defendants have agreed to provide \$124,625,000.00 in consideration to the Class Members. Up to \$25,125,000.00 of that amount will be paid to Class Counsel and other counsel representing arbitration claimants and certain other Class members in attorneys’ fees and expenses, to the extent approved by the Court (*see* answer to question 13 below), and up to \$75,000.00 in total will be

paid to the Named Plaintiffs as a Case Contribution Award, to the extent approved by the Court (*see* answer to question 8 below). In addition, \$9,045,455.00 will be paid in civil penalties to the United States Department of Labor (“DOL”). The amount that will be available for distribution to Class Members (known as the “Net Settlement Fund”) will be the Settlement Amount of \$124,625,000.00 *minus* the amounts used for other Settlement purposes (Case Contribution Awards, Court-approved attorneys’ fees and expenses, Administration Expenses, the fees of an Independent Fiduciary retained to review the fairness of this Settlement on behalf of the Plan and certain taxes and tax-related costs), and *minus* the penalties paid to the DOL.

**8. What are the Named Plaintiffs receiving from the Settlement?**

In this case, there are three Named Plaintiffs. Class Counsel intends to ask the Court to award the Named Plaintiffs a Case Contribution Award in total of up to \$75,000.00 in recognition of the work and effort they expended on behalf of the Class.

**9. How may I benefit from the Settlement?**

You may benefit by receiving payment of a portion of the Net Settlement Fund. The amount paid to each Participant, Former Participant, Beneficiary, or Alternate Payee will be determined by a Plan of Allocation, which is attached as Exhibit “1” to this Class Notice.

If you executed a release in favor of any the Defendants or had an award or judgment entered in connection with any related proceedings against any of the Defendants (regardless of whether you won or lost), you may still be able to obtain a payment as part of the Settlement. If you already received an arbitration award related to claims concerning the Plan’s investments, you will receive at least the amount of any unpaid damages against DST included in that award. If the amount of damages against DST included in your arbitration award is less than the amount you would otherwise receive under this Settlement, or if you did not recover any damages in your arbitration proceeding, you will receive a Settlement Payment, as discussed in the Plan of Allocation, to ensure that you receive the full amount to which you would be entitled under this Settlement after accounting for any other consideration you already received from any of the Defendants for these claims. In other words, any Class Member who received an arbitration award will recover at least as much as they were awarded in damages in arbitration against DST, and certain Class Members who would have done worse in arbitration than under this Settlement will receive more than they were awarded in arbitration.

If you already received consideration (meaning a monetary payment, account allocation or financial benefit of any kind) as an Arbitration Claimant in return for execution of a release in favor of any of the Defendants, you will retain that consideration and, if you are entitled to a share of the Settlement Fund according to the Settlement Agreement that is greater than the amount of that consideration, you will receive a “top-off” payment in the amount of the difference.

**10. How will I receive my Settlement Payment?**

If you are a Participant, or Beneficiary or Alternate Payee of a Plan participant, and you have an active account in the Plan, your Settlement Payment will automatically be calculated by the Settlement Administrator, deposited into your Plan account, and invested in accordance with your investment elections for new contributions.

If you are a Former Participant, or a Beneficiary or an Alternate Payee of a Former Participant, and you do not have an active account in the Plan, you will receive your Settlement Payment directly in the form of a check. If, however, you would prefer to receive your Settlement Payment through a rollover to a qualified retirement account, you must complete, sign, and submit a Former Participant Rollover Form no later than **[date to be first business day 70 days after entry of Preliminary Approval Order]**. “Former Participant” means a person who had an account in the Plan during the Class Period and who did not have an account in the Plan with a balance greater than \$0 as of **[date of Preliminary Approval Order]**.

You may download the Former Participant Rollover Form on the Settlement website. A Former Participant Rollover Form will be deemed submitted when it is actually received by the Settlement Administrator at the address listed in the Form.

## **THE SETTLEMENT BENEFITS – WHAT YOU GIVE UP**

### **11. What do I give up by participating in the Settlement?**

Each Class Member gives the Defendants a “release.” A release means you give up your rights to sue the Defendants and Goldfarb (as well as related persons as defined in the Settlement Agreement under “Defendant Releasees”), and you give up your rights to receive any benefits from any other lawsuit or other legal proceeding, including arbitration, against the Defendants or Goldfarb, if the lawsuit or other legal proceeding asserts any claims in any way related to any of the allegations made in this case or in other lawsuits or arbitrations involving the Plan, or if the lawsuit or other legal proceeding asserts any claims in any way related to the Plan, its investments, fees, or performance, or any action or inaction by any Plan fiduciary. If approved, the Settlement also will terminate the lawsuit brought by the DOL against Defendants and Goldfarb, and you would give up any right to benefit from the result in that litigation.

As a Class Member, you are currently enjoined from litigating in any action or proceeding other than this class action any claims against the *Ferguson* DST Defendants arising out of or related to the allegations asserted in this class action. Additionally, if the Court approves the Settlement, you will not be able to pursue—and will be permanently enjoined by the Court from pursuing—any other lawsuit or other legal proceeding, including arbitration, against any of the Defendants or Goldfarb that asserts any claims in any way related to any of the allegations made in this case or in other lawsuits or arbitrations involving the Plan, or any claims in any way related to the Plan, its investments, fees, or performance, or any action or inaction by any Plan fiduciary.

You will not be required to return any benefit or consideration you already may have been paid as part of any other lawsuit or other legal proceeding against the Defendants or Goldfarb prior to approval of this Settlement.

For additional details about the scope of the release, consult the Settlement Agreement (including the definition of “Released Claims”) or contact Class Counsel.

## THE LAWYERS REPRESENTING YOU

### 12. Do I have a lawyer in this case?

Yes. The Court has appointed the law firms of Miller Shah LLP and Olivier & Schreiber, LLP as Class Counsel. You will not be charged for the work of these lawyers. If you want to be represented by a different lawyer in this case, you may hire one at your own expense. Certain of the Class Members who have pursued arbitrations against the Defendants, and certain of the Class Members who filed separate actions in the Southern District of New York in actions captioned *Canfield, et al. v. SS&C Technologies Holdings, Inc., et al.*, Case No. 18-cv-08913 (S.D.N.Y.), and *Mendon, et al. v. SS&C Technologies Holdings, Inc., et al.*, Case No. 18-cv-10252 (S.D.N.Y.), are also represented by other counsel (“Arbitration Counsel” and “*Canfield/Mendon* Counsel,” respectively).

### 13. How will the lawyers (Class Counsel and other counsel) be paid?

Class Counsel may ask the Court for an award of attorneys’ fees and expenses of up to \$9,500,000, based upon the value of the Settlement, the time they have devoted to this case, and the expenses they have advanced in prosecuting this matter. Arbitration Counsel will ask the Court for an award of attorneys’ fees and expenses up to \$15,500,000, based upon their work in those arbitrations and the awards of fees and expenses they received in arbitrations. *Canfield/Mendon* Counsel will ask the Court to award them \$250,000 in attorneys’ fees and expenses, half of which will be paid by Arbitration Counsel. Only attorneys’ fees and expenses that are approved and awarded by the Court will be paid as part of this Settlement.

## OPTING OUT OF THE SETTLEMENT

### 14. Can I exclude myself from the Class?

No. The Class has been certified as a mandatory class under Federal Rule of Civil Procedure 23(b)(1). That means that, as a Class Member, you are not permitted to exclude yourself from the class, and you are bound by any judgments or orders that are entered by the Court in the lawsuit for all claims that were asserted in the lawsuit or are otherwise included as Released Claims as defined in the Settlement Agreement. If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement.

## OBJECTING TO THE SETTLEMENT

### 15. What does it mean to object?

Objecting is simply telling the Court that you do not like something about the Settlement. Objecting will not have any bearing on your right to receive the benefits of the Settlement if it is approved by the Court.

**16. What is the procedure for objecting to the Settlement, including objecting to motions for attorneys' fees and expenses or Case Contribution Awards?**

By filing an objection, you can ask the Court to deny approval of the Settlement and/or any motions for attorneys' fees and expenses and/or the Case Contribution Awards to be requested for the Named Plaintiffs. You can't ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no Settlement Payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The Court, however, can approve the Settlement and also award less than the amount requested by Class Counsel for attorneys' fees and expenses or the amount requested for Case Contribution Awards. If the Court does, either because of an objection or in its own discretion, make any such reduction in Class Counsel's attorneys' fees and expenses or Case Contribution Awards, that would not otherwise affect the finality of the Settlement, although it could affect the timing and amount of Settlement Payments.

Any objection to the proposed Settlement or any motions for attorneys' fees and expenses or Case Contribution Awards must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Fairness Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number *Ferguson, et al. v. Ruane, Cunniff & Goldfarb Inc., et al.*, No. 1:17-cv-06685-ALC-BCM (S.D.N.Y.), (b) be submitted to the Court by mailing them to the Clerk, U.S. District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007, and (c) be filed or received by the Court on or before **ten (10) days before Final Approval/Fairness Hearing**. Your objection also must include (1) your full name, current address, and current telephone number, and, if represented by counsel, your counsel's name and contact information; (2) whether the objection applies only to the objecting Class Member, to a specific subset of the Class, or to the entire Class; (3) a statement of the position(s) the objector wishes to assert; (4) copies of any other documents that the objector wishes to submit in support of their position; and (5) a list of any other objections to any class action settlements submitted in any court, whether state, federal, or otherwise, in the United States in the previous five (5) years.

**ANY CLASS MEMBER WHO DOES NOT OBJECT IN THE MANNER DESCRIBED ABOVE SHALL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL NOT HAVE ANY RIGHT TO OBJECT TO THE FAIRNESS OR ADEQUACY OF THE SETTLEMENT.**

<p><b><u>Clerk of the Court</u></b></p> <p>Clerk U.S. District Court for the Southern District of New York Daniel Patrick Moynihan United States Courthouse 500 Pearl Street New York, NY 10007</p>	<p><b><u>Class Counsel</u></b></p> <p>James E. Miller Laurie Rubinow Miller Shah, LLP 65 Main Street Chester, CT 06412 Tel: (860) 526-1100</p>	<p><b><u>DST</u></b></p> <p>Lewis R. Clayton Jeffrey J. Recher Paul, Weiss, Rifkind, Wharton &amp; Garrison LLP 1285 Avenue of the Americas New York, NY 10019-6064 Tel: (212) 373-3000</p>
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<p><b><u>RCCG</u></b></p> <p>Gregory F. Jacob O'Melveny &amp; Myers LLP 1625 Eye Street, NW Washington, DC 20006 Tel: (202) 383-5110</p>	<p><b><u>Goldfarb</u></b></p> <p>Myron D. Rumeld Proskauer Rose LLP Eleven Times Square New York, NY 10036 Tel: (212) 969-3021</p>	<p><b><u>DOL</u></b></p> <p>Isidro Mariscal Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor 200 Constitution Avenue NW, Suite N-4611, Washington, DC 20210 Tel: (202) 693-5794</p>
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**THE COURT’S FAIRNESS HEARING**

**17. When/where will the Court decide whether to approve the Settlement?**

On [date and time], in the Courtroom of the Honorable Andrew L. Carter, Jr., U.S. District Court for the Southern District of New York, Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007, the Court will hold a Fairness Hearing to determine whether the proposed Settlement is fair, reasonable, and adequate and whether it should be approved. The hearing may be continued from time to time by the Court without further notice.

**18. Do I have to attend the Fairness Hearing?**

No; however, you are welcome to attend at your own expense. If you file an objection to the Settlement, you do not have to go to Court to talk about it. As long as your objection is filed by [ten (10) days before Final Approval/Fairness Hearing] and you comply with the requirements listed in the answer to question 16 above, the Court will consider it. You also may send your own lawyer to attend the Fairness Hearing.

**19. May I speak at the Fairness Hearing?**

You may ask the Court for permission to speak at the hearing. Anyone wishing to appear must state in their written objection their intention to appear at the Fairness Hearing, at their own expense.



**IF YOU DO NOTHING**

**20. What happens if I do nothing at all?**

If you do nothing, and the Court approves the Settlement, you will receive a Settlement Payment in accordance with the Plan of Allocation. (*See* answers to questions 9 and 10 above and Exhibit 1.) You also will release any and all claims that you may have against Defendants and Goldfarb, as well as related persons, concerning the practices, facts and/or events at issue in this lawsuit or in other related lawsuits involving the Plan. (*See* answer to question 11 above.) You also will waive any objection to the fairness and adequacy of the Settlement. (*See* answer to questions 15 and 16 above.)

DATED: [within fourteen (14) calendar days following entry of the Preliminary Approval Order]

**THIS CLASS NOTICE HAS BEEN SENT TO YOU BY ORDER  
OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

## EXHIBIT “1” – PLAN OF ALLOCATION

1. Each capitalized term below that is not defined herein has the definition provided in the Settlement Agreement.
2. After the Effective Date of Settlement, the Settlement Administrator shall cause the amount of the Net Settlement Fund (the “Net Settlement Amount”) to be allocated and distributed to the Former Participants as set forth in Paragraph 1.7 below, and to the Plan for payments to Participants with Active Accounts as set forth in Paragraph 1.6 below, both in accordance with the Plan of Allocation set forth herein and as ordered by the Court.
3. To be eligible for a payment from the Net Settlement Amount (“Net Settlement Payment” or “Settlement Payment(s)”), a person must be a Participant with an Active Account, a Former Participant, a Beneficiary, or an Alternate Payee. Participants with Active Accounts, and Beneficiaries or Alternate Payees of such Participants, shall receive their Settlement Payments as additions to their Active Accounts, as provided for in Paragraph 1.6 below. Former Participants, and Beneficiaries or Alternate Payees of such Former Participants, shall receive their Settlement Payments in the form of checks or in the form of rollovers to an individual retirement account or other eligible employer plan, as provided in Paragraph 1.7 below.
4. Beneficiaries will receive Settlement Payments, as described in this Plan of Allocation, in amounts corresponding to their entitlement as Beneficiaries of the Participant or Former Participant with respect to whom the payment is made. This includes Settlement Payments to Beneficiaries based upon the Participant’s or Former Participant’s Plan account during the Class Period and/or by the Beneficiary’s own Plan account during the Class Period, if an account was created in the Plan for the Beneficiary. Alternate Payees will receive Settlement Payments if and to the extent they are entitled to receive a portion of a Participant’s or Former Participant’s allocation under this Plan of Allocation pursuant to the terms of the applicable QDRO, including Alternate Payees for whom an account was created in the Plan. Beneficiaries and Alternate Payees with Active Accounts will receive payments by the method described in this Plan of Allocation for Participants with Active Accounts. Beneficiaries and Alternate Payees who do not have Active Accounts will receive Settlement Payments by the method described in this Plan of Allocation for Former Participants. The Settlement Administrator shall have sole and final discretion to determine the amounts to be paid to Beneficiaries and Alternate Payees in accordance with the Plan of Allocation set forth herein and as ordered by the Court.
5. **Calculation of Settlement Payments.** Payments to Participants, Former Participants, Beneficiaries, and Alternate Payees, shall be calculated by the Settlement Administrator pursuant to the Plan of Allocation as follows:
  1. For purposes of calculating payments to Participants, Former Participants, Beneficiaries, and Alternate Payees, the “Gross Differential” attributable to each Participant, Former Participant, Beneficiary, or Alternate Payee shall be the difference between the highest quarterly PSP balance attributable to each Participant, Former Participant, Beneficiary or Alternate Payee between March 14,

2010 and July 31, 2016 (or as of December 31, 2009 if there was no balance as of March 31, 2010) and the total distributions and roll-overs to other retirement accounts or instruments (including Active Accounts) received by the individual between March 14, 2010 and July 31, 2016 (the termination date of the PSP).

2. The Settlement Administrator shall first calculate the total of all Gross Differentials to be used for purposes of allocating the Net Settlement Amount (“Net Gross Differential”) by subtracting from the total of the Gross Differential amounts the individual Gross Differential amounts of the individuals who have been excluded from the class (the “Former Plan Fiduciaries”), as well as the individual Gross Differential amounts of those Participants, Former Participants, Beneficiaries, or Alternate Payees who already have released their claims against all Defendants through prior settlements (the “Prior Releasers”).<sup>1</sup>
3. The Settlement Administrator shall then calculate the pro rata percentage of the Net Gross Differential attributable to each Participant, Former Participant, Beneficiary, or Alternate Payee, other than the Former Plan Fiduciaries and the Prior Releasers, by dividing the Gross Differential of each Participant, Former Participant, Beneficiary, or Alternate Payee, other than the Former Plan Fiduciaries and Prior Releasers, by the Net Gross Differential. The Settlement Administrator shall then calculate an initial pro rata share of the Net Settlement Amount attributable to each Participant, Former Participant, Beneficiary, or Alternate Payee, other than the Former Plan Fiduciaries and the Prior Releasers, (the “Initial Net Settlement Allocations”), by multiplying the Net Settlement Amount by the pro rata percentage attributable to each Participant, Former Participant, Beneficiary, or Alternate Payee, other than the Former Plan Fiduciaries and the Prior Releasers.
4. The Settlement Administrator shall next determine those Participants, Former Participants, Beneficiaries, or Alternate Payees who have received a Damages Award in arbitration against any of the *Ferguson* DST Defendants (“Arbitration Claimants”). “Damages Award” means the amount any arbitrator(s) awarded to an Arbitration Claimant in an arbitration against any of the *Ferguson* DST Defendants for purported losses to that Arbitration Claimant’s PSP account, either in an interim or final award, less any gross amounts that Arbitration Claimant previously received in return for execution of a release in favor of any of the Defendants (a “Separate Settlement”). If an Arbitration Claimant received both an interim award and a final award, or if the Arbitration Claimant’s final award was later modified by any arbitrator(s), the Settlement Administrator shall use the last-in-time award that contains a Damages Award. “Damages Award” excludes attorney’s fees, statutory costs, and out-of-pocket expenses, and excludes administrative fees and expenses of the American Arbitration Association. No amount included in any arbitration award with respect to attorney’s fees, statutory costs, or out-of-pocket

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<sup>1</sup> The Prior Releasers are: Alicia R. Andrews, Stephen W. Bay, Vanessa M. Bross, Kendra J. Burmaster, Christopher S. Davis, Jacqueline C. Davis, Mary E. Lamy, Brian J. Majernik, Brad D. McMillin, Michael N. Murphy, Robert O. Parrott, Percy W. Payne, Patricia J. Pottinger, Lawrence Schellenberger, and Randall W. Sharp.

expenses, or administrative fees and expenses of the American Arbitration Association, shall be considered in allocating or distributing the Net Settlement Amount.

5. If the amount of a Damages Award received by a particular Arbitration Claimant, plus any net amount of consideration (meaning any amount not paid to counsel for that Arbitration Claimant) received in a Separate Settlement, is greater than the Initial Net Settlement Allocation for that Arbitration Claimant, the Settlement Administrator shall allocate to each such Arbitration Claimant from the Net Settlement Amount the amount of the Damages Award, to the extent such Damages Award has not previously been satisfied by the *Ferguson* DST Defendants separate from this Settlement. The Plan of Allocation will refer to the amounts of the Damages Awards allocated under this Paragraph as the “Arbitration Award Settlement Amounts,” and will refer to the recipients of the Arbitration Award Settlement Amounts as the “Arbitration Award Settlers.”
6. After allocating the Arbitration Award Settlement Amounts pursuant to Paragraph 1.5.5, the Settlement Administrator shall subtract from the Net Settlement Amount the total amount of the Arbitration Award Settlement Amounts to calculate the Net Settlement Amount allocable to the remaining Class Members (the “Revised Net Settlement Amount”).
7. If the amount of a Damages Award received by a particular Arbitration Claimant, plus any net amount of consideration (meaning any amount not paid to counsel for that Arbitration Claimant) received in a Separate Settlement, is less than the Initial Net Settlement Allocation for that Arbitration Claimant, including any Arbitration Claimant to whom no damages were awarded in arbitration, the allocation for each such Arbitration Claimant shall be calculated in accordance with Paragraphs 1.5.8 through 1.5.11, without reference to any such Damages Award. Pursuant to Paragraph 1.5.4 and Paragraphs 1.5.7 through 1.5.11, no Arbitration Claimant shall receive a Settlement Payment less than that Arbitration Claimant’s Damages Award.
8. The Settlement Administrator shall then calculate the sum of the Gross Differentials attributable to each remaining Participant, Former Participant, Beneficiary, or Alternate Payee (other than the Former Plan Fiduciaries, the Prior Releasers, and the Arbitration Award Settlers), to arrive at a Revised Net Gross Differential Balance. The Settlement Administrator shall then calculate the pro rata share of the Revised Net Gross Differential Balance attributable to each remaining Participant, Former Participant, Beneficiary, or Alternate Payee, other than the Former Plan Fiduciaries, the Prior Releasers, and the Arbitration Award Settlers (the “Revised Net Settlement Allocations”), by (a) deducting \$10 for each remaining Participant, Former Participant, Beneficiary, or Alternate Payee (other than the Former Plan Fiduciaries, the Prior Releasers, and the Arbitration Award Settlers) with a Gross Differential amount of zero or less, as well as any remaining Participant, Former Participant, Beneficiary, or Alternate Payee (other than the Former Plan Fiduciaries, the Prior Releasers, and the Arbitration Award Settlers)

with a Gross Differential amount that would otherwise result in payment of less than \$10 and each Prior Releasor, and (b) multiplying the remaining Revised Net Settlement Amount by the pro rata percentage of the Revised Net Gross Differential Balance attributable to each remaining Participant, Former Participant, Beneficiary, or Alternate Payee, other than the Former Plan Fiduciaries, the Prior Releasors, the Arbitration Award Settlers, and the Participants, Former Participants, Beneficiaries and Alternate Payees who will receive \$10.

9. Any Participant, Former Participant, Beneficiary, or Alternate Payee, other than the Former Fiduciaries, the Prior Releasors, and the Arbitration Award Settlers, who already received consideration (meaning a monetary payment, account allocation or financial benefit of any kind), whether in a Separate Settlement or as part of an arbitration award that already has been satisfied arising out of or related to Plaintiffs' Released Claims (a "Separate Satisfied Award" and, together with "Separate Settlement," a "Separate Payment"), shall have the net amount of such consideration received as a result of the Separate Payment, meaning any amount not paid to counsel for those Participants, Former Participants, Beneficiaries, or Alternate Payees (the "Net Separate Payment"), applied and credited against the Revised Net Settlement Allocation attributable to that Participant, Former Participant, Beneficiary, or Alternate Payee. If the Net Separate Payment is less than the Revised Net Settlement Allocation that the Participant, Former Participant, Beneficiary, or Alternate Payee would receive as a result of this Settlement, then such Participant, Former Participant, Beneficiary, or Alternate Payee shall be entitled to receive the difference between (a) the Revised Net Settlement Allocation, and (b) the Net Separate Payment. That is, any Class Member who received a Separate Payment will receive a "top-off" payment to ensure that they receive the full amount of the Revised Net Settlement Allocation to which they would be entitled under this Settlement (once any Net Separate Payment is taken into account). No Class Members or other recipients of consideration who are not Class Members will be required under this Plan of Allocation or this Settlement to return or otherwise forfeit any consideration already received as a result of a Net Separate Payment.
10. Any Class Member whose Settlement Payment, as provided for in Paragraphs 1.5.4 through 1.5.9, is calculated by the Settlement Administrator to be \$10.00 or less, including Class Members who had Gross Differential amounts of \$0.00 or less, shall receive a Settlement Payment of \$10.00. Each Prior Releasor also will receive a Settlement Payment of \$10.00.
11. Any amounts remaining in the Net Settlement Fund after allocating amounts due to Class Members who received Separate Payments, as provided in Paragraph 1.5.9, and allocating the minimum Settlement Payments to Class Members, as provided in Paragraph 1.5.10, shall be distributed to Participants, Former Participants, Beneficiaries, or Alternate Payees, other than the Former Fiduciaries, the Prior Releasors, and the Arbitration Award Settlers, based on the pro rata percentages calculated in accordance with Paragraph 1.5.8.

12. Each Participant, Former Participant, Beneficiary, or Alternative Payee who is eligible to recover from the Net Settlement Fund shall be paid their portion of the Net Settlement Fund based upon the calculations in Paragraphs 1.5.4 through 1.5.12. All amounts not distributed shall be retained in the Qualified Settlement Fund for distribution pursuant to Paragraph 1.13.
  13. The Plan recordkeepers (or designees) shall provide the necessary data subject to their control as may be reasonably available and necessary to enable the Settlement Administrator to perform the above calculations.
  14. The Settlement Administrator shall utilize the calculations required to be performed herein for (a) making the required payments to Former Participants, and to Beneficiaries or Alternate Payees who do not have Active Accounts, under Paragraph 1.7 of this Plan of Allocation; and (b) instructing the Plan as to the amount of the Net Settlement Amount to be allocated to Participants, and to Beneficiaries or Alternate Payees who have Active Accounts, under Paragraph 1.6 of this Plan of Allocation and calculating the total amount to deposit into each of their Active Account(s) to fulfill this instruction.
  15. The total amount of all rollovers or checks to be paid by the Settlement Administrator for Former Participants, and Beneficiaries or Alternate Payees who do not have Active Accounts, plus the total amount of all allocations that the Plan is instructed to make to Participants, and Beneficiaries or Alternate Payees who have Active Accounts, may not exceed the Net Settlement Amount.
6. **Payments to Participants, Beneficiaries, or Alternate Payees with Active Accounts.** Participants, and Beneficiaries or Alternate Payees who have Active Accounts, will have their Settlement Payment deposited into their Active Accounts.
1. Within two (2) business days after the Settlement Administrator has completed all payment calculations for all Participants, and Beneficiaries or Alternate Payees who have Active Accounts, the Settlement Administrator will provide the Plan's recordkeepers, in a format and via a delivery method mutually agreed upon by the Settlement Administrator and the Plan's recordkeepers, with an Excel spreadsheet containing the name, Social Security number (or alternative identifier(s) mutually acceptable), and amount of the Settlement Payment to be made into the Active Account(s) for each of these persons. In the event the Excel spreadsheet includes Social Security numbers, the Settlement Administrator will transmit the spreadsheet in a manner to protect the confidentiality of any such Social Security numbers.
  2. Subject to Paragraph 1.2, and within ten (10) business days' written notice to the Plan and the Plan's recordkeepers, the Settlement Administrator shall effect a transfer from the Qualified Settlement Fund to the trust for the Plan of the aggregate amount of all Settlement Payments payable to Active Participants, and Beneficiaries or Alternate Payees who have Active Accounts, as reflected in the spreadsheet provided by the Settlement Administrator. Within thirty (30) calendar

days of the transfer from the Qualified Settlement Fund to the trust for the Plan described in this Paragraph 1.6.2, the Settlement Administrator will provide to Class Counsel, Defense Counsel, and the Secretary (i) documentation of the transfer to the trust for the Plan and (ii) a statement issued by the trustee for the trust for the Plan showing receipt of the transfer. The Plan (or its designee) shall direct the Plan's recordkeepers to credit the individual Active Account(s) of each such person in an amount equal to that stated on the spreadsheet provided by the Settlement Administrator in relation to each such person.

3. The Settlement Payment for each Participant who is an active participant in the Plan will be invested in accordance with and proportionate to such Participant's investment elections then on file for new contributions. If the Participant does not have an investment election on file, then such Participant shall be deemed to have directed such payment to be invested in the Plan's default investment option. Likewise, the Settlement Payment to each Beneficiary or Alternate Payee who has an Active Account will be invested in accordance with and proportionate to such person's investment elections then on file, or if such a person does not have investment elections on file, then such person will be deemed to have directed such payment to be invested in the Plan's default investment option.
4. The Plan's recordkeeper shall process all Settlement Payments to Participants, Beneficiaries, or Alternate Payees who have Active Accounts as soon as administratively feasible after the Plan receives the payment from the Qualified Settlement Fund and the Excel spreadsheet containing the agreed-upon information.
5. If, as of the date when payments pursuant to this Settlement Agreement are made, a Participant, or Beneficiary or Alternate Payee who had an Active Account, no longer has an Active Account, they will be treated as a Former Participant for purposes of the Settlement distribution only and will receive their payment from the Settlement Administrator in the form of a check or rollover as described in Paragraph 1.7. In order to receive a rollover, a Participant, or Beneficiary or Alternate Payee who had an Active Account, who no longer has an Active Account on the date of their Settlement distribution, will need to fill out a Former Participant Rollover Form.
7. **Payments to Former Participants, Beneficiaries, or Alternate Payees without Active Accounts.** Each Former Participant, Beneficiary, or Alternate Payee who does not have an Active Account will have the opportunity to elect a rollover of their Settlement Payment to an individual retirement account or other eligible employer plan, which they have identified on the Former Participant Rollover Form, provided that such a person supplies adequate information to the Settlement Administrator to effect the rollover. Otherwise, the Former Participant, Beneficiary, or Alternate Payee who does not have an Active Account will receive their Settlement Payment directly by check. The distributions shall be issued as follows:
  1. The Settlement Administrator will either effect from the Qualified Settlement Fund the rollover that the Former Participant, Beneficiary, or Alternate Payee who does

not have an Active Account elects in their Former Participant Rollover Form (if the conditions for such rollover are satisfied) and any associated paperwork necessary to effect the Settlement distribution by rollover, *or* issue a check from the Qualified Settlement Fund to the Former Participant, Beneficiary, or Alternate Payee who does not have an Active Account, and mail the check to the address of such Former Participant, Beneficiary, or Alternate Payee provided by a Plan recordkeeper or, in the case of ambiguity or uncertainty, to the last known address of such person as determined by the Settlement Administrator using commercially reasonable means.

2. With respect to Settlement Payments that are not rolled over, the Settlement Administrator shall (i) calculate and withhold any applicable taxes associated with the payments allocable to the Former Participant, Beneficiary, or Alternate Payee who does not have an Active Account; (ii) report such payments and remit such tax withholdings to the Internal Revenue Service and applicable state revenue agents; and (iii) issue appropriate tax forms to these persons.
8. The Settlement Administrator shall be solely responsible for performing any calculations required by this Plan of Allocation. If the Settlement Administrator concludes that it is impracticable to implement any provision of this Plan of Allocation, or that the Plan of Allocation total would otherwise exceed the Net Settlement Amount, the Settling Parties agree to promptly discuss modifications to the terms of this Plan of Allocation and present such modified terms to the Court for its approval. Direct mailed notice to Class Members of such proposed modification of the Plan of Allocation shall not be required. However, notice of such proposed modification shall be posted by the Settlement Administrator on the Settlement website.
9. Within twenty-one (21) calendar days following the issuance of all settlement payments to Class Members as provided by this Plan of Allocation, the Settlement Administrator shall prepare and provide to Class Counsel, Defense Counsel, and the Secretary an initial report listing (i) each person who received a Settlement Payment; (ii) the form of the Settlement Payment (whether a contribution to an active Plan account, a check, or a rollover to another qualified retirement account); (iii) the gross amount of the Settlement Payment; (iv) the net amount of the Settlement Payment after any tax withholdings; (v) the date of issuance of the Settlement Payment; and (vi) the date the Settlement Payment cleared, if applicable.
10. The Settling Parties acknowledge that any payments to Class Members or their attorneys may be subject to applicable tax laws. Defendants and Defense Counsel will provide no tax advice to the Class Members and make no representation regarding the tax consequences of any of the Settlement Payments described in this Settlement Agreement. To the extent that any portion of any Settlement Payment is subject to income or other tax, the recipient of the payment shall be responsible for payment of such tax. Deductions will be made, and reporting will be performed by the Settlement Administrator, as required by law in respect of all payments made under the Settlement Agreement. Payments from the Qualified Settlement Fund shall not be treated as wages by the Settling Parties.
11. Each Class Member who receives a payment under this Settlement Agreement shall be fully and ultimately responsible for payment of any and all federal, state, or local taxes



resulting from or attributable to the payment received by such person. Each Class Member shall hold Defendants, the Defendant Releasees, Defense Counsel, Class Counsel, and the Settlement Administrator harmless from any tax liability, including penalties and interest, related in any way to payments under the Settlement Agreement, and shall hold Defendants, the Defendant Releasees, Defense Counsel, Class Counsel, and the Settlement Administrator harmless from the costs (including, for example, attorneys' fees and disbursements) of any proceedings (including, for example, investigation and suit), related to such tax liability.

12. All checks issued pursuant to this Plan of Allocation shall expire one hundred eighty (180) calendar days after their issue date. All checks that are undelivered or are not cashed before their expiration date shall revert to the Qualified Settlement Fund. Within twenty-one (21) calendar days following the latest expiration date of any checks issued pursuant to this Plan of Allocation, the Settlement Administrator shall prepare and provide to Class Counsel, Defense Counsel, and the Secretary an updated report listing (i) each person who received a Settlement Payment; (ii) the form of the Settlement Payment (whether a contribution to an active Plan account, a check, or a rollover to another qualified retirement account); (iii) the gross amount of the Settlement Payment; (iv) the net amount of the Settlement Payment after any tax withholdings; (v) the date of issuance of the Settlement Payment; and (vi) the date the Settlement Payment cleared, if applicable.
13. No sooner than ninety (90) calendar days following the Effective Date of Settlement, any Net Settlement Amount remaining in the Qualified Settlement Fund after payments, including costs and taxes, shall be paid to the Plan for the benefit of the Plan's participants as set forth in the Settlement Agreement. Within thirty (30) calendar days following the payment of any remaining Net Settlement Amount to the Plan, the Settlement Administrator shall provide to Class Counsel, Defense Counsel, and the Secretary (i) documentation of the transfer from the Qualified Settlement Fund to the trust for the Plan; and (ii) a statement issued by the trustee for the trust for the Plan showing receipt of the transfer.

# EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MICHAEL L. FERGUSON,  
MYRL C. JEFFCOAT and DEBORAH  
SMITH, Individually and as Representatives  
of a Class of Similarly Situated Plan  
Participants and Beneficiaries, and on behalf  
of the DST SYSTEMS, INC. 401(K) PROFIT  
SHARING PLAN,

Plaintiffs,

v.

RUANE, CUNNIFF & GOLDFARB INC.;  
DST SYSTEMS, INC.; THE ADVISORY  
COMMITTEE OF THE DST SYSTEMS, INC.  
410(K) PROFIT SHARING PLAN; and THE  
COMPENSATION COMMITTEE OF THE  
BOARD OF DIRECTORS OF DST  
SYSTEMS, INC.,

Defendants

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JULIE A. SU, Acting U.S. Secretary of Labor,  
Plaintiff,

v.

RUANE, CUNNIFF & GOLDFARB, INC.;  
DST SYSTEMS, INC.; ROBERT D.  
GOLDFARB; THE ADVISORY  
COMMITTEE OF THE DST SYSTEMS,  
INC. 401(K) PROFIT SHARING PLAN;  
THE COMPENSATION COMMITTEE OF  
THE BOARD OF DIRECTORS OF DST  
SYSTEMS, INC.; KENNETH V. HAGER;  
RANDALL D. YOUNG; GREGG W.  
GIVENS; GERARD M. LAVIN; M.  
ELIZABETH SWEETMAN; DOUGLAS W.  
TAPP; GEORGE L. ARGYROS;  
LAWRENCE M. HIGBY; TRAVIS E. REED;  
LOWELL L. BRYAN; SAMUEL G. LISS;  
BRENT L. LAW; LYNN DORSEY BLEIL;  
CHARLES E. HALDEMAN, JR.; JEROME  
H. BAILEY; GARY D. FORSEE; and the  
DST SYSTEMS, INC. 401(K) PROFIT  
SHARING PLAN,

Defendants.

Civil Action No. 1:17-cv-06685-ALC-BCM

**[PROPOSED] FINAL APPROVAL  
ORDER, JUDGMENT, AND  
PERMANENT INJUNCTION**

Civil Action No. 19-cv-09302-ALC-BCM

<p>MICHAEL L. FERGUSON,  MYRL C. JEFFCOAT and DEBORAH  SMITH, Individually and as Representatives  of a Class of Similarly Situated Plan  Participants and Beneficiaries, and on behalf  of the DST SYSTEMS, INC. 401(K) PROFIT  SHARING PLAN,    Plaintiffs,    v.  ROBERT D. GOLDFARB,    Defendant</p> <p>-----</p>
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Civil Action No. 1:20-cv-07092-ALC-BCM

The Court, having received and considered the Motion for a Final Approval Order of Plaintiffs Michael L. Ferguson, Myrl C. Jeffcoat, and Deborah Smith (collectively, “Named Plaintiffs”), dated July \_\_\_, 2023 (the “Motion”), the papers filed in support of the Motion, and the declarations of counsel; having further considered the arguments of counsel and the pleadings and record in this case; and finding good cause for granting the Motion,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

1. **Jurisdiction:** The Court has subject-matter jurisdiction over the Action, as well as over the *Su* Action, *Ferguson II*, and the *DST* Action, and all matters relating to the Settlement under 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1), as well as personal jurisdiction over all of the Settling Parties and the Settlement Class.

2. **Incorporation of Settlement Documents:** This Final Approval Order, Judgment, and Permanent Injunction incorporates and makes a part hereof: (a) the Settlement Agreement filed with the Court on July \_\_\_, 2023, including the exhibits submitted therewith; and (b) the Class Notice approved by the Court on \_\_\_\_\_. Capitalized terms not defined in this Final Approval Order, Judgment, and Permanent Injunction shall have the meaning ascribed to them in the Settlement Agreement.

3. **Class Certification:** Consistent with this Court’s findings of fact, conclusions of law, and determinations of any mixed fact/law questions in its Memorandum and Order dated August 17, 2021, ECF No. 311 (the “Certification Order”), the Court previously held that the mandatory Settlement Class should be certified, on a preliminary basis, under Federal Rules of Civil Procedure 23(a) and 23(b)(1). The Court confirms that the class preliminarily certified under Federal Rule of Civil Procedure 23(b)(1) is appropriate for the reasons set forth in its Preliminary Approval Order, as well as in its Certification Order, and hereby finally certifies the following Settlement Class:

All Participants in the Plan from March 14, 2010 through July 31, 2016 (the “Class Period”), ***except:*** (i) all individuals who during the Class Period were members of the Advisory Committee; (ii) all individuals who during the Class Period were members of the Compensation Committee; (iii) any other individuals who served as fiduciaries of the Plan during the Class Period; and (iv) the beneficiaries, immediate family members, estates, and executors of (i)-(iii).

4. **Notice:** The Court finds that the dissemination of the Class Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice reasonably practicable under the circumstances; (c) together with the Preliminary Approval Order, constituted notice that was reasonably calculated, under the circumstances, to apprise all Class Members of (i) the pendency of the Action, (ii) the effect of the Settlement Agreement (including the benefits of the Settlement and the release of the Defendant Releasees by Plaintiffs, as well as the Permanent Injunction), (iii) Persons’ right to object to the Settlement and appear at the Fairness Hearing, and (iv) Class Counsel’s application for Settlement Administration Expenses, Independent Fiduciary Fees and Costs, CAFA Fees and Costs, Attorneys’ Fees and Expenses, and Case Contribution Award(s), as well as Arbitration Counsel’s and *Canfield/Mendon* Counsel’s application for attorney’s fees and expenses; (d) constituted due, adequate, reasonable, and sufficient notice to all Persons or entities entitled to receive notice of the proposed Settlement;

and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

5. **Objections:** The Court finds that any objections filed do not preclude entry of this Order.

6. **Final Settlement Approval:** Pursuant to Federal Rule of Civil Procedure 23(e), the Court hereby approves the Settlement and the terms thereof as a fair, reasonable, and adequate settlement and compromise of the claims asserted in the Action. The Court finds that the Settlement is fair, reasonable, and adequate to the Plan, Class Members and other affected Persons based on the following findings of fact, conclusions of law, and determinations of mixed fact/law questions:

- (a) The Settlement resulted from arm's-length negotiations by experienced and competent counsel, including through a mediation before an experienced mediator, Robert A. Meyer;
- (b) The Settlement was negotiated after Class Counsel and Julie A. Su, the Acting United States Secretary of Labor (the "Secretary"), had conducted a pre-settlement investigation and received pertinent information and documents from Ruane, Cunniff & Goldfarb Inc.; Robert D. Goldfarb; and the *Ferguson* DST Defendants;
- (c) Class Counsel and Named Plaintiffs were well-positioned to evaluate the value of the Action and the claims of the DST Systems, Inc. 401(k) Profit Sharing Plan;
- (d) If the Settlement had not been achieved, Named Plaintiffs and the Class Members faced significant expense, risk, and uncertainty in connection with the litigation, which likely would have been prolonged;
- (e) The Total Settlement Payment is fair, reasonable, and adequate in light of the claims that were asserted, the risks of litigation, and settlements in other similar cases, and the Plan of Allocation is also fair, reasonable, and appropriate;
- (f) Class Counsel and Named Plaintiffs support the Settlement, and have concluded that the Settlement Agreement is fair, reasonable, and adequate;

- (g) Class Members had the opportunity to be heard on all issues relating to the Settlement, including attorney's fees and expenses and Case Contribution Award(s), by submitting objections to the Court. There were no meritorious objections to the Settlement.
- (h) Other Persons that may be potentially impacted by the Settlement, including the Permanent Injunction referred to below, have likewise had the opportunity to be heard.
- (i) The Settlement also was reviewed by an Independent Fiduciary, \_\_\_\_\_, who has approved and authorized the Settlement.

7. The Motion for Final Approval of Class Action Settlement is hereby GRANTED, the settlement of the Action is APPROVED as fair, reasonable, and adequate to the Plan and the Settlement Class, and the Settling Parties, and, as to any provisions applicable to them, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel are hereby directed to take the necessary steps to effectuate the terms of the Settlement Agreement.

8. Class Counsel's Motion for Attorneys' Fees and Expenses is hereby GRANTED, and the request for Case Contribution Award(s) is hereby approved. Arbitration Counsel's Motion for Attorneys' Fees and Expenses is hereby GRANTED. *Canfield/Mendon* Counsel's Motion for Attorneys' Fees and Expenses is hereby GRANTED. The payment of all attorneys' fees and expenses hereby awarded shall be made pursuant to the terms of the Settlement Agreement.

9. Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court fully and finally approves the Settlement set forth in the Settlement Agreement in all respects including, without limitation, the terms of the Settlement; the releases and discharges provided for therein; the dismissal with prejudice of the claims asserted in the Action, and, as set forth in the Settlement Agreement, the claims asserted in the *Su* Action, *Ferguson II*, and the *DST* Action; and the Permanent Injunction. The Court finds that the Settlement is, in all respects, fair, reasonable, and adequate, and is in the best interests of Named Plaintiffs, the Settlement Class, and the Plan. The Settling Parties, and, as to any provisions

applicable to them, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel, are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions of the Settlement Agreement.

10. The Settlement Administrator shall have final authority, pursuant to the Plan of Allocation, to determine the share of the Net Settlement Fund to be allocated to each Participant with an active Plan account, Former Participant, Beneficiary, or Alternate Payee.

11. **Permanent Injunction:** The Court hereby permanently bars, enjoins, and restrains:

- (a) Plaintiff Releasors, and any Person purporting to act on their behalf or in concert with them, or asserting a Claim under or through them, from commencing, prosecuting, or asserting, or continuing to prosecute or assert, other than in a timely and proper appeal from an order in this Action to the United States Court of Appeals for the Second Circuit or the United States Supreme Court, any Claims against any Person or entity (including other Plaintiff Releasors), where the Claim is included in, in any way relates to, or arises out of the Released Claims, including in which any Plaintiff Releasor seeks to recover from any Person or entity (including other Plaintiff Releasors): (i) any amounts that any Defendant Releasee has or might become liable to pay to the Settlement Class or any Class Member; and/or (ii) any costs, expenses, or attorneys' fees from prosecuting or defending any Claim by any Class Member. All such Claims shall be extinguished, discharged, satisfied, and unenforceable.
- (b) Plaintiff Releasors, and any Person purporting to act on their behalf or in concert with them, or asserting a Claim under or through them, from commencing, prosecuting, or asserting, or continuing to prosecute or assert, any Claims in any Arbitration, or any Claims to confirm or to enforce any Arbitration Award, or any Claims to enforce any judgment arising from or in any way related to any Arbitration Award, including, without limitation, any award of damages, attorneys' fees, expenses, or costs, against any Defendant Releasee. All such Claims shall be extinguished, discharged, satisfied, and unenforceable.
- (c) All Persons who have represented or are representing any Class Member, and any Person purporting to act on their behalf or in concert with them, from commencing, prosecuting, or asserting, or continuing to prosecute or assert, against any Class Members, Class Counsel, Arbitration Counsel, *Canfield/Mendon* Counsel, or Defendant Releasees, in any forum, action, or proceeding of any kind, any Claims for attorneys' fees, expenses or costs



in connection with any representation of Class Members arising from or related in any way to the Released Claims, except as set out in Section 13 of the Settlement Agreement and in the manner prescribed by Federal Rule of Civil Procedure 23(h), or in a timely and proper appeal from an order in this Action to the United States Court of Appeals for the Second Circuit or the United States Supreme Court.

12. The Court finds that entry of the Permanent Injunction, in exchange for the payment of the Total Settlement Payment in accordance with the terms of the Settlement Agreement, is fair and reasonable based on the following considerations, among others: (a) in the absence of the Settlement and Permanent Injunction, Defendants would be unwilling to pay the Total Settlement Payment; (b) permitting further litigation arising out of or relating to the Released Claims, the Settlement, this Action, the Arbitrations, or Related Proceedings could work to the detriment of all Persons interested in the Action, including because such litigation is likely to be complex and to require significant expenditure of time and financial resources, and because such litigation may affect other interested Persons or Class Members; (c) in the absence of a settlement, the Plan and the Class Members might recover substantially less than the Total Settlement Payment from Defendants, or might fail to achieve any recovery; (d) the Total Settlement Payment is fair, reasonable, and adequate taking into account the merits of the claims and potential claims released and Defendants' defenses to those claims and potential claims; and (e) the Settlement Agreement represents a fair and reasonable balancing of the various interests implicated by the Action, the Settlement Agreement, and disputes and controversies related thereto.

13. This Final Approval Order, Judgment, and Permanent Injunction shall be served by Class Counsel, via email, first class mail, or international delivery service, on any Person or entity that filed an objection to approval of the Settlement or this Final Approval Order, Judgment, and Permanent Injunction, or on their counsel.

14. **Dismissal of Claims:** This Action is dismissed with prejudice. The Settling Parties shall bear their own costs and expenses, except as otherwise expressly provided herein or in the Settlement Agreement. In addition, the *Su* Action, *Ferguson II*, and the *DST* Action are hereby dismissed with prejudice, with each of those parties to bear their own fees, costs and expenses, as of the Effective Date. As reflected in the Settlement Agreement, the *Cooper* Action, the Arbitrations, any actions filed by any of the Arbitration Claimants against DST in the U.S. District Court for the Western District of Missouri or any other court, and any appeals pending between or among any of the Settling Parties, Arbitration Claimants, and the *Canfield/Mendon* Plaintiffs in the U.S. Courts of Appeals for the Second and Eighth Circuits shall be dismissed by the parties with prejudice and all parties to bear their own fees, costs and expenses within five (5) business days of the Effective Date.

15. **Binding Effect:** The terms of the Settlement Agreement and of this Final Approval Order, Judgment, and Permanent Injunction shall be forever binding on the Settling Parties, as well as their respective current and former beneficiaries, heirs, descendants, dependents, marital communities, administrators, executors, representatives, predecessors, successors, assigns, and any Person purporting to act on their behalf, and, with respect to certain provisions of the Settlement Agreement as specified therein, on the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel.

16. **CAFA:** Pursuant to the Class Action Fairness Act, 29 U.S.C. § 1711, *et seq.* (“CAFA”), a separate notice of the Settlement (“CAFA Notice”) was provided to the Attorneys General for each of the states and territories in which a Class Member resides and the Attorney General of the United States. All requirements of CAFA have been met, and Defendants have fulfilled their obligations under CAFA.

17. **Releases:** The releases given by the Plaintiffs, the Secretary, the Defendants, Arbitration Counsel, and *Canfield/Mendon* Counsel in Sections 4.1–4.10 of the Settlement Agreement (collectively, the “Releases”), are expressly incorporated herein in all respects. The Releases are effective as of the date of the entry of this Final Approval Order, Judgment, and Permanent Injunction.

18. **No Use of Settlement Agreement in Any Future Proceedings Except to Enforce the Settlement:** The Settling Parties, the Secretary, Arbitration Counsel, and *Canfield/Mendon* Counsel understand and agree that the Settlement Agreement, as well as this Final Approval Order, Judgment, and Permanent Injunction, embody a compromise and settlement of disputed claims, and that nothing in the Settlement Agreement, including the furnishing of consideration for the Settlement Agreement, or the fact or terms of the Settlement Agreement, shall be treated as an admission or denial or offered, introduced, or otherwise used in any action or proceeding for any purpose, except to enforce the Settlement Agreement and/or this Final Approval Order, Judgment, and Permanent Injunction, including, without limitation, the Permanent Injunction contained therein.

19. **Retention of Jurisdiction:** Without affecting the finality of this Final Approval Order, Judgment, and Permanent Injunction in any way, this Court retains continuing and exclusive jurisdiction over the Action, the Settling Parties, and the Settlement Class, to resolve any dispute or issue of enforcement relating to the Settlement Agreement and the orders and notices referenced in Section 3 of the Settlement Agreement, including but not limited to the Permanent Injunction and issues regarding validity, performance, interpretation, administration, enforcement, enforceability or termination of the Settlement Agreement.

20. **Modification of the Agreement:** The Settlement Agreement may be modified or amended only by written agreement signed on behalf of all Settling Parties, and, if the modification or amendment concerns a provision binding them, signed by or on behalf of the Secretary, Arbitration Counsel, and/or *Canfield/Mendon* Counsel, and approved by the Court.

21. **Termination:** If the Settlement does not go into effect or is terminated as provided for in the Settlement Agreement, then this Final Approval Order, Judgment, and Permanent Injunction, and any orders of the Court relating to the Settlement, shall be vacated, rendered null and void, and be of no further force or effect, except as otherwise provided by the Settlement Agreement. Nothing in this provision shall be construed to affect the Court's Certification Order or the Court's November 18, 2021 Order granting an injunction, ECF No. 330, as clarified by the Court's February 3, 2022 Order Denying Motion to Stay, ECF No. 369.

22. **Entry of Final Judgment:** There is no just reason to delay entry of this Final Approval Order, Judgment, and Permanent Injunction as a final judgment in this Action. Accordingly, the Clerk of the Court is respectfully directed to enter this Final Approval Order, Judgment, and Permanent Injunction, and to close this case.

**SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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The Honorable Andrew L. Carter, Jr.  
United States District Judge

# EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MICHAEL L. FERGUSON,  
MYRL C. JEFFCOAT and DEBORAH  
SMITH, Individually and as Representatives  
of a Class of Similarly Situated Plan  
Participants and Beneficiaries, and on behalf  
of the DST SYSTEMS, INC. 401(K) PROFIT  
SHARING PLAN,

Plaintiffs,

v.

RUANE, CUNNIFF & GOLDFARB INC.;  
DST SYSTEMS, INC.; THE ADVISORY  
COMMITTEE OF THE DST SYSTEMS, INC.  
410(K) PROFIT SHARING PLAN; and THE  
COMPENSATION COMMITTEE OF THE  
BOARD OF DIRECTORS OF DST  
SYSTEMS, INC.,

Defendants.

Civil Action No. 1:17-cv-06685-ALC-BCM

**[PROPOSED] PRELIMINARY  
APPROVAL ORDER**

The Court, having received and considered the Motion for a Preliminary Approval Order of Plaintiffs Michael L. Ferguson, Myrl C. Jeffcoat, and Deborah Smith (collectively, “Named Plaintiffs”), dated July \_\_, 2023 (the “Motion”), and the papers filed in support of the Motion, including the Settlement Agreement entered into as of July \_\_, 2023 and all exhibits thereto (the “Settlement Agreement”), and the declarations of counsel; having further considered the arguments of counsel and the pleadings and record in this case; and finding good cause for granting the Motion,

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. Capitalized terms not defined in this Preliminary Approval Order shall have the meaning ascribed to them in the Settlement Agreement.

2. This Court has jurisdiction to consider the Motion and the relief requested therein under 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).

3. Venue in this Court is proper pursuant to 29 U.S.C. § 1132(e)(2).

4. Consistent with this Court's findings of fact, conclusions of law, and determinations of any mixed fact/law questions in its Memorandum and Order dated August 17, 2021, ECF No. 311 (the "Certification Order"), the Court finds, on a preliminary basis and for the purposes of settlement only, that the mandatory Settlement Class should be certified under Federal Rules of Civil Procedure 23(a) and 23(b)(1). The Court hereby certifies the following Settlement Class:

All Participants in the Plan from March 14, 2010 through July 31, 2016 (the "Class Period"), *except*: (i) all individuals who during the Class Period were members of the Advisory Committee; (ii) all individuals who during the Class Period were members of the Compensation Committee; (iii) any other individuals who served as fiduciaries of the Plan during the Class Period; and (iv) the beneficiaries, immediate family members, estates, and executors of (i)-(iii).

The Court's prior findings and reasoning in certifying the class in this Action (the "Class") in the Certification Order continue and are incorporated herein.<sup>1</sup> The Court will use the terms "Class" and "Settlement Class" interchangeably in recognition of the Settlement reached by the parties.

5. The terms set forth in the Settlement Agreement are preliminarily approved, subject to further consideration at the hearing the Court will hold pursuant to Federal Rule of Civil Procedure 23(e) to determine whether the Settlement should receive final approval by the Court, as provided for below (the "Fairness Hearing"). Having considered the terms of the Settlement and the submissions in support of preliminary approval, the Court determines, in accordance with

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<sup>1</sup> The definition of the Settlement Class set forth above is identical in all material respects to the definition of the class certified in the Certification Order. The only changes from the prior class definition clarify that the Plan fiduciaries excluded from the class are those who served as fiduciaries during the Class Period.

Federal Rule of Civil Procedure 23(e)(1)(B), that it is likely that the Court will be able to grant final approval of the Settlement under Federal Rule of Civil Procedure 23(e)(2) following notice and a hearing. The Settlement Agreement therefore is sufficiently within the range of reasonableness to warrant preliminary approval of the Settlement, the scheduling of the Fairness Hearing, and the mailing of Class Notice, each as provided for in this Preliminary Approval Order.

6. The Court approves the retention by Class Counsel of Strategic Claims Services as the Settlement Administrator.

7. This Preliminary Approval Order does not alter or modify the existing injunction as against members of the Federal Rule of Civil Procedure 23(b)(1) class certified by this Court on August 17, 2021, as set forth in the Court's November 18, 2021 Order, ECF No. 330, as clarified by the Court's February 3, 2022 Order Denying Motion to Stay, ECF No. 369, which remains in effect.

8. The Court approves the Class Notice and Summary Notice in substantially the forms attached as **Exhibit A** and **Exhibit D** to the Settlement Agreement. The Court approves the form and content of the Class Notice and Summary Notice and finds that the proposed Class Notice and Summary Notice fairly and adequately:

Summarize the claims that are asserted;

Identify the Settlement Class;

Describe the terms and effect of the Settlement Agreement, including the benefits of the Settlement and the release of the Defendant Releasees by Plaintiffs, as well as the Permanent Injunction;

Provide information regarding who is required to submit a Former Participant Rollover Form and the process for doing so;

Notify the Settlement Class that Class Counsel will seek compensation from the Qualified Settlement Fund for Settlement Administration Expenses, Independent Fiduciary Fees and Costs, CAFA Fees and Costs,



attorney's fees and expenses, and Case Contribution Award(s);

Notify the Settlement Class that Arbitration Counsel and *Canfield/Mendon* Counsel will seek compensation from the Qualified Settlement Fund for attorney's fees and expenses;

Describe how the recipients of the Class Notice may object to the Settlement, or any requested Settlement Administration Expenses, attorney's fees and expenses, or Case Contribution Award(s); and

Give notice to the Settlement Class of the time and place of the Fairness Hearing, and Class Members' and other affected Persons' right to appear.

9. The Court finds that the Plan of Allocation proposed by Named Plaintiffs and Class Counsel for allocating the Settlement Fund to Class Members, as described in **Exhibit 1** to the Class Notice, is likely to receive final approval and that the Settlement is within the range of reasonableness to warrant preliminary approval.

**Manner of Giving Notice**

10. The Plan's recordkeepers are directed to provide to the Settlement Administrator, within five (5) calendar days of the entry of this Preliminary Approval Order, any information (including names and last known addresses and email addresses, if available) the Settlement Administrator reasonably identifies as necessary to effectuate the Class Notice that have not already been supplied to the Settlement Administrator. The names, addresses and email addresses, if available, provided to the Settlement Administrator pursuant to this Preliminary Approval Order shall be used solely for the purpose of providing Class Notice of this Settlement and, as may become necessary, for distribution of the Net Settlement Fund and for no other purpose, and shall be treated as "Confidential."

11. Within fourteen (14) calendar days of the entry of this Preliminary Approval Order and no later than the first date that the emailing or the physical mailing of the Class Notice occurs, the Settlement Administrator shall establish a website containing the Class Notice, the Summary

Notice, the Settlement Agreement and its exhibits, this Preliminary Approval Order, the Complaint, and the Motions for Preliminary Approval and Final Approval (when filed); the motion(s) for attorney's fees and expenses (when filed); any approval order or other Court orders related to the Settlement, any amendments or revisions to these documents, and any other documents or information mutually agreed upon by the parties.

12. Within fourteen (14) calendar days of the entry of this Preliminary Approval Order and no later than the first date that the emailing or the physical mailing of the Class Notice occurs, the Settlement Administrator shall establish a toll-free telephone number to which Class Members can direct questions about the Settlement.

13. Within fourteen (14) calendar days after entry of this Preliminary Approval Order, the Settlement Administrator shall cause copies of the Class Notice to be sent by first-class mail or email (if available) to all Participants in the Plan during the Class Period through the notice procedure described in the Settlement Agreement and shall cause the Summary Notice to be published one time in *USA Today* and PR Newswire.

14. Not later than seven (7) business days after sending the Class Notice, the Settlement Administrator shall provide to Class Counsel and to Defense Counsel a declaration attesting to compliance with the sending of the Class Notice, as set forth above.

15. The Court finds that the Class Notice to be provided as set forth in this Preliminary Approval Order is the best means of providing notice to the Class Members as is reasonably practicable under the circumstances and, when completed, shall constitute due and sufficient notice of the Settlement and the Fairness Hearing to all Persons affected by or entitled to participate in the Settlement or the Fairness Hearing, in full compliance with the requirements of due process and the Federal Rules of Civil Procedure.

16. All Settlement Administration Expenses, Independent Fiduciary Fees and Costs, and CAFA Fees and Costs shall be paid as set forth in the Settlement Agreement.

**Fairness Hearing**

17. The Court will hold the Fairness Hearing on \_\_\_\_\_ [seventy-four (74) calendar days after entry of this Preliminary Approval Order] in Courtroom \_\_\_ at \_\_\_\_\_, for the purposes of determining whether: (i) the proposed Settlement on the terms and conditions provided for in the Settlement Agreement is fair, reasonable and adequate and should be approved by the Court; (ii) Final Judgment should be entered; (iii) the Settlement Class should be certified as a mandatory class meeting the applicable requirements for a settlement class imposed by Federal Rule of Civil Procedure 23(b)(1); (iv) the requirements of Federal Rule of Civil Procedure 23 and due process have been satisfied in connection with the distribution of the Class Notice and the Summary Notice to members of the Settlement Class; (v) the requirements of CAFA have been satisfied; (vi) the Permanent Injunction (as set forth in Section 3.3.6 of the Settlement Agreement) should be entered; (vii) the Plan of Allocation, consistent with Section 12.4 of the Settlement Agreement, shall be approved; (viii) to approve Case Contribution Award(s) from the Qualified Settlement Fund and, if so, the amount(s); (ix) to award from the Qualified Settlement Fund attorney's fees and further expenses, and if so, the amounts to Class Counsel, Arbitration Counsel, and *Canfield/Mendon* Counsel; (x) to approve payment from the Qualified Settlement Fund for Settlement Administration Expenses, Independent Fiduciary Fees and Costs, and CAFA Fees and Costs; and (xi) to address any objections to the Settlement that are properly before this Court, as provided below. The Court will likewise consider any and all other matters that may properly be brought before the Court in any way connected to the Settlement. Notice of the Settlement and the Fairness Hearing shall be given to all Participants in the Plan during the Class Period as set forth in this Preliminary Approval Order.

18. Not later than twenty (20) calendar days before the Fairness Hearing, Class Counsel, Arbitration Counsel, and *Canfield/Mendon* Counsel shall petition the Court for an award of attorneys' fees and expenses, and Class Counsel shall petition the Court for approval of Case Contribution Award(s), to be paid from the Qualified Settlement Fund.

19. Not later than twenty (20) calendar days before the Fairness Hearing, Class Counsel shall file a motion for a Final Approval Order. Should Defense Counsel elect to submit papers in support of final approval, they shall likewise do so not later than fifteen (15) calendar days before the Fairness Hearing.

20. Not later than twenty (20) calendar days before the Fairness Hearing, the Independent Fiduciary shall submit its report pursuant to Section 3.7.1 of the Settlement Agreement.

21. The Court may continue or adjourn the Fairness Hearing without further direct notice to the Class Members or other Persons, other than notice to Class Counsel.

#### **Objections to the Settlement**

22. The Court will consider written comments and objections to the Settlement, to any motion for attorney's fees and expenses, and to Plaintiffs' request for Case Contribution Award(s). Any objection to the proposed Settlement must be in writing, and must (i) clearly identify the case name and number, and (ii) be submitted to the Court either by mailing it to the Clerk of the Court, United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, or by filing it in person at any location of the United States District Court for the Southern District of New York. To state a valid objection to the Settlement, an objecting Person must provide the following information in their written objection: (1) their full name, current address, and current telephone number, and, if represented by counsel, the name and contact information of any of their counsel; (2) whether the objection applies only to the objecting

Person, to a specific subset of the Settlement Class, or to the entire Settlement Class; (3) a statement of the position(s) the objector wishes to assert; (4) copies of any other documents that the objector wishes to submit in support of their position; and (5) a list of any other objections they have made to any class action settlements submitted in any court, whether state, federal, or otherwise, in the United States in the previous five (5) years.

23. Any Person's objections must be received by the Court and the Settling Parties no later than ten (10) calendar days before the Fairness Hearing. Class Counsel and/or Defense Counsel shall file a response to any objections no later than three (3) calendar days before the Fairness Hearing. Objectors will not be permitted a reply in support of their objection.

24. Any Person who does not timely file a written objection in the manner specified above shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement Agreement, and any untimely or improperly filed objection shall be barred absent an order from the Court.

25. Any Person who files and serves a timely, written comment or objection in accordance with this Preliminary Approval Order may also appear at the Fairness Hearing either in person or through qualified counsel retained at their own expense. Any comment or objection that is timely filed in accordance with this Preliminary Approval Order will be considered by the Court even in the absence of a personal appearance by the Person or that Person's counsel.

#### **Termination of Settlement**

26. If the Settlement is terminated in accordance with the terms of the Settlement Agreement, this Preliminary Approval Order shall become null and void, *ab initio*, and shall be without prejudice to the rights of the parties, all of whom shall be deemed to have reverted to their respective status in the Action as of October 31, 2022 or as otherwise provided for in the Settlement Agreement.

**Approval of Settlement**

27. The Court may approve the Settlement with such modifications as may be agreed to by the Settling Parties, if appropriate, and if the modifications concern a provision binding the Secretary, Arbitration Counsel, and/or *Canfield/Mendon* Counsel, as additionally agreed to by the Secretary, Arbitration Counsel, and/or *Canfield/Mendon* Counsel, without further notice to the Class Members or other Persons.

**Jurisdiction**

28. The Court retains jurisdiction over this Action, the Settling Parties and the Settlement Class to consider all further applications or matters arising out of or in any way connected to the proposed Settlement, including but not limited to any and all applications for attorney's fees and expenses, the Permanent Injunction, and issues regarding the validity, performance, interpretation, administration, enforcement, enforceability or termination of the Settlement Agreement.

**SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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The Honorable Andrew L. Carter, Jr.  
United States District Judge

# EXHIBIT D

New York, NY —, 2023 [date to be inserted, within 14 days after entry of Preliminary Approval Order]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MICHAEL L. FERGUSON, : Civil Action No.
MYRL C. JEFFCOAT and DEBORAH SMITH, : 1:17-cv-06685-ALC-BCM
individually and as representatives of a class of :
similarly situated plan participants and :
beneficiaries, and on behalf of the :
DST SYSTEMS, INC. 401(K) PROFIT :
SHARING PLAN, :
:
Plaintiffs, :
v. :
RUANE, CUNNIFF & GOLDFARB INC., et al., :
Defendants. :

SUMMARY NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND SETTLEMENT FAIRNESS HEARING

TO: ALL CURRENT AND FORMER PARTICIPANTS IN THE DST SYSTEMS, INC. 401(K) PROFIT SHARING PLAN (THE "PLAN") WHO WERE PARTICIPANTS IN THE PLAN BETWEEN MARCH 14, 2010 AND JULY 31, 2016.

PLEASE READ THIS NOTICE CAREFULLY.
A FEDERAL COURT AUTHORIZED THIS NOTICE.
THIS IS NOT A SOLICITATION.
YOU ARE NOT BEING SUED.

A settlement has been preliminarily approved by a federal court in a class action lawsuit brought by Plaintiffs Michael L. Ferguson, Myrl C. Jeffcoat, and Deborah Smith (collectively, "Named Plaintiffs"), on behalf of the Settlement Class and the DST Systems, Inc. 401(k) Profit Sharing Plan (the "Plan"), against Defendants Ruane, Cunniff & Goldfarb Inc. ("RCG"); DST Systems, Inc. ("DST"), the Advisory Committee of the DST Systems, Inc. 401(k) Profit Sharing Plan (the "Advisory Committee"), and the Compensation Committee of the Board of Directors of DST Systems, Inc. (the "Compensation Committee," and together with DST and the Advisory Committee, the "Ferguson DST Defendants"), as well as Robert D. Goldfarb ("Goldfarb," a defendant in a separate related action). RCG, the Ferguson DST Defendants, and Goldfarb are collectively referred to as "Defendants." Plaintiffs allege breaches of fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA"). This Settlement will provide \$124,625,000.00 to the Plan, subject to certain deductions for Court-approved fees and expenses,



including attorney's fees; administrative costs; and civil penalties paid to the United States Department of Labor. The net settlement amount after these deductions will be allocated to Plan participants who had Plan accounts during the Class Period. All capitalized terms not otherwise defined in this Summary Notice of Class Action Settlement (the "Summary Notice") have the meaning provided in the Settlement Agreement (the "Settlement Agreement") available on the Settlement website (provided below). If you currently have a Plan account, you will receive an allocation to your Plan account without taking any further action. If you previously had a Plan account but no longer have one, you will be sent a check unless you submit a Former Participant Rollover Form. The United States District Court for the Southern District of New York authorized this Summary Notice.

## **WHO IS INCLUDED IN THE SETTLEMENT?**

If you were a Participant in the Plan at any time during the period from March 14, 2010 until July 31, 2016, inclusive (the "Class Period"), or you were a Beneficiary or Alternate Payee of any such Participant, then you are a member of the Settlement Class (a "Settlement Class Member"), **UNLESS** you: (i) were a member of the Advisory Committee of the Plan during the Settlement Class Period; (ii) were a member of the Compensation Committee of the Board of Directors of DST Systems, Inc. during the Settlement Class Period; (iii) otherwise served as a fiduciary of the Plan during the Settlement Class Period; or (iv) are a beneficiary, immediate family member, estate or executor of (i)-(iii).

## **WHAT IS THIS CASE ABOUT?**

Plaintiffs claim that the Defendants violated ERISA by, among other things, investing an inappropriate amount of the PSP's assets in the stock of Valeant Pharmaceuticals ("VRX"), failing to timely reduce and/or eliminate the PSP's investments in VRX, and, in the case of the *Ferguson* DST Defendants, failing to adequately monitor the fiduciaries managing the PSP's investments. Plaintiffs' allegations are described in more detail in the Complaint(s) available on the Settlement website. The Court has not made any finding that the Defendants have done anything wrong or violated any law or regulation. Both sides agreed to the Settlement to avoid the cost and risk of further litigation.

## **WHAT DOES THE SETTLEMENT PROVIDE?**

Defendants have agreed to provide \$124,625,000.00, which will be divided among eligible Settlement Class Members after payment of attorneys' fees to Class Counsel, to counsel who represent certain Settlement Class Members who pursued arbitrations ("Arbitration Counsel"), and to counsel who represent certain other Settlement Class Members who filed separate actions in the Southern District of New York ("*Canfield/Mendon* Counsel"); Case Contribution Awards to Named Plaintiffs; payment of other costs and expenses of the Settlement, including notice and claims administration, as the Court may allow; and civil penalties payable to the United States Department of Labor. The total attorneys' fees and expenses to be requested from the Settlement Fund will be no more than \$25,125,000.00, with Class Counsel requesting an award of \$9,500,000.00; Arbitration Counsel requesting \$15,500,000.00; and *Canfield/Mendon* Counsel requesting up to \$250,000.00, half of which amount will be paid by Arbitration Counsel. Arbitration Counsel are also paying a portion of their fees to *Canfield/Mendon* counsel on account

of assistance he provided in the arbitration matters. The Settlement Agreement, other related documentation, and a list of Frequently Asked Questions, available at the Settlement website identified below, describe the details of the proposed Settlement. Your share (if any) of the settlement fund will depend upon the amount and value of your Plan account(s) during the Settlement Class Period and certain other factors, including whether you previously obtained any payment from any of the Defendants related to the PSP's investment in VRX.

Please note that, if you executed a release in favor of any the Defendants or had an award or judgment entered in connection with any related proceedings against any of the Defendants (regardless of whether you won or lost), you may still be able to obtain a payment as part of the Settlement. If you already have received an arbitration award related to claims concerning the PSP's investment in VRX, as part of this Settlement you will receive at least the amount of any unpaid damages against DST included in that arbitration award. If you already received consideration (meaning a monetary payment, account allocation or financial benefit of any kind) as an arbitration claimant in return for execution of a release in favor of any of the Defendants, you will retain that consideration and, if you are entitled to a share of the Settlement Fund according to the Settlement Agreement that is greater than the amount of that consideration, you will receive a "top-off" payment in the amount of the difference.

This Settlement releases any claims against Defendants relating in any way to the allegations made in this case or in other lawsuits or arbitrations involving the Plan, as well as any claims in any way related to the Plan, its investments, fees, or performance, or any action or inaction by any Plan fiduciary. This means that if the Court approves the Settlement, you will not be able to pursue any other lawsuit or other legal proceeding, including arbitration, against any of the Defendants that asserts any claims in any way related to any of the allegations made in this case or in other lawsuits or arbitrations involving the Plan, or any claims in any way related to the Plan, its investments, fees, or performance, or any action or inaction by any Plan fiduciary.

The Settlement also will resolve a separate proceeding brought by the Department of Labor alleging ERISA violations in connection with the Plan.

## **HOW DO I RECEIVE A PAYMENT?**

If you are a Settlement Class member, a current Participant in the Plan, or a Beneficiary or Alternate Payee of a Plan participant who has an active account in the Plan, and you are entitled to a share of the Settlement Fund according to the Settlement Agreement, you are not required to do anything to receive a payment. Your Settlement Payment will automatically be calculated by the Settlement Administrator, deposited into your Plan account, and invested in accordance with your investment elections for new contributions.

If you are no longer a Participant in the Plan, or you are a Beneficiary or Alternate Payee of a Plan Participant who does not have an active account in the Plan, you will receive your Settlement Payment directly in the form of a check. If your address has changed since you closed your Plan account(s), please contact the Settlement Administrator toll-free at (866) 274-4044 or by email to [info@strategicclaims.net](mailto:info@strategicclaims.net) to advise of the change of address.

If you are no longer a Participant in the Plan, or you are a Beneficiary or Alternate Payee of a Plan participant who does not have an active account in the Plan and you would prefer to receive your Settlement Payment through a rollover to a qualified retirement account instead of a check, you will need to submit a Former Participant Rollover Form by the deadline contained on the Settlement website. You may download the Former Participant Rollover Form on the Settlement website.

### **CAN I OBJECT TO OR OPT OUT OF THE SETTLEMENT?**

This is a mandatory settlement. You do not have the right to exclude yourself from the Settlement in this case, but you do have the right to object to it by writing to the Court. Your objection may include objecting to the amount of attorneys' fees and expenses requested by Class Counsel or any other counsel, the amount of Case Contribution Awards requested by the Named Plaintiffs, and the amount of civil penalties to be remitted to the United States Department of Labor. You will be bound by any judgments or orders that are entered in this Action, and if the Settlement is approved, you will be deemed to have released the Defendants and associated persons from all claims that were or could have been asserted in this case, including all Released Claims as defined under the Settlement Agreement, other than your right to obtain the relief provided to you, if any, by the Settlement.

The Court will hold a hearing in this case on **[date and time]**, in the Courtroom of the Honorable Andrew L. Carter, Jr., U.S. District Court for the Southern District of New York, Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007, to consider whether to approve the Settlement and a request by the lawyers representing all Settlement Class Members, Class Counsel, as well as other counsel, for attorneys' fees, for Case Contribution Awards to the Named Plaintiffs, for other case-related expenses, and the civil penalties amount payable to the United States Department of Labor. If approved, these amounts will be paid from the Settlement Fund. You may ask to speak at the hearing by filing a Notice of Intention to Appear no later than **[ten (10) days before the Final Approval/Fairness Hearing]**, but you are not required to do so.

Although you cannot opt out of the Settlement, you may object to all or any part of the Settlement and/or the Motion for Attorneys' Fees filed by Class Counsel, the Motion for Attorneys' Fees filed by other counsel, and the request for award of Case Contribution Awards in accordance with the instructions included in the long-form Notice of Proposed Settlement of Class Action and Settlement Fairness Hearing available at the Settlement website below. Objections must be received by the Court, by filing or by mail, by no later than **[ten (10) days before the Final Approval/Fairness Hearing]**. Please note that the time, place and date of the hearing may change without a further mailing. Class Counsel will update the Settlement website below if the hearing time or location is changed. Please check the website or contact Class Counsel if you wish to confirm that the hearing time has not been changed.

### **HOW DO I GET MORE INFORMATION?**

If you are a Settlement Class member and would like to receive additional information or to receive a copy of the long-form Notice of Proposed Settlement of Class Action and Settlement Fairness Hearing, you can obtain such information by (a) sending a letter to DST Settlement Administrator, c/o Strategic Claims Services, 600 N Jackson St #205, Media, PA 19063; (b) sending an e-mail to

info@strategicclaims.net; (c) visiting the Settlement website at [www.dstplansettlement.com](http://www.dstplansettlement.com); or (d) calling toll-free at (866) 274-4004.

# EXHIBIT E

**Former Participant Rollover Form**

If you were a Participant in a defined contribution 401(k) retirement plan known as the DST Systems, Inc. 401(k) Profit Sharing Plan (the “Plan”) at any time from March 14, 2010 through July 31, 2016 (the “Class Period”), or you are a Beneficiary or Alternate Payee (in the case of a person subject to a Qualified Domestic Relations Order (“QDRO”)) who does not have an active account in the Plan, and you would like to receive your Settlement Payment from the *Ferguson, et al. v. Ruane, Cunniff & Goldfarb Inc., et al.* Settlement through a rollover to a qualified retirement account, you must complete the form below and mail it to DST Settlement Administrator, c/o Strategic Claims Services, 600 N Jackson Street, Suite 205, Media, PA 19063 postmarked NO LATER THAN [first business day 70 days after entry of Preliminary Approval Order]. The option to submit this form applies to any Class Member who maintained a positive balance in the Plan at any time during the Class Period, but who does not have an account with a positive balance as of [date of Preliminary Approval Order].

**Deceased Class Members**

Deceased Class Members are not eligible for rollover treatment. A Beneficiary of a deceased person who was a participant in the Plan at any time during the Class Period, including executors, heirs, assigns, estates, personal representatives or successors-in-interest, must provide the following information with this Claim Form to DST Settlement Administrator, c/o Strategic Claims Services, 600 North Jackson Street, Suite 205, Media, PA 19063:

- Evidence that such person is authorized to receive distribution of the deceased Class Member’s Settlement Payment, and the name and, if applicable, the percentage entitlement of each person entitled to receive distribution;
- Social Security Number of each person entitled to receive payment;
- Current mailing address of each person entitled to receive payment; and
- Person(s) to whom check(s) should be made payable, and amount(s) of check(s).

**Participant Information**

Name		
Address		
Address 2		
City	State	Zip
Participant’s Social Security Number	Phone (Preferred)	Phone (Alternate)
Participant’s Date of Birth		

**(Continued)**

Email Address
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**Beneficiary or Alternate Payee Information (IF APPLICABLE)**

Your Name		
Address		
Address 2		
City	State	Zip
Your Social Security Number	Phone (Preferred)	Phone (Alternate)
Your Date of Birth		
Email Address		

I WANT A CHECK MADE PAYABLE TO MY RETIREMENT ACCOUNT AS A ROLLOVER DISTRIBUTION. PLEASE MAKE THE CHECK PAYABLE TO:

Account Name	
Account Number	
Contact or Trustee (if required)	
Address Line 1	
Address Line 2	
City, State, Zip	

**NOTE: There is no promise or assurance that these funds are eligible for rollover or tax-preferred treatment. The decision to seek rollover treatment is yours alone. Any questions about taxation or rollover treatment must be directed to your tax advisor or accountant. No one associated with this case can provide you with assistance or advice of any kind in this regard or answer any tax questions.**

(Continued)

**Required Certification Regarding Qualified Domestic Relations Order (“QDRO”):** I hereby certify and represent under penalty of perjury that no portion of the payment to be received hereunder is subject to a QDRO, or that a true and accurate and current copy of any applicable QDRO is attached hereto along with the name and address of any payee other than a Class Member. Payment will be made in accordance with any QDRO supplied.

**Signature (Required):** \_\_\_\_\_

**Date:** \_\_\_\_\_



# EXHIBIT F

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JULIE A. SU, Acting U.S. Secretary of Labor,

Plaintiff,

v.

RUANE, CUNNIFF & GOLDFARB INC.; DST SYSTEMS, INC.; ROBERT D. GOLDFARB; THE ADVISORY COMMITTEE OF THE DST SYSTEMS, INC. 401(K) PROFIT SHARING PLAN; THE COMPENSATION COMMITTEE OF THE BOARD OF DIRECTORS OF DST SYSTEMS, INC.; KENNETH V. HAGER; RANDALL D. YOUNG; GREGG W. GIVENS; GERARD M. LAVIN; M. ELIZABETH SWEETMAN; DOUGLAS W. TAPP; GEORGE L. ARGYROS; LAWRENCE M. HIGBY; TRAVIS E. REED; LOWELL L. BRYAN; SAMUEL G. LISS; BRENT L. LAW; LYNN DORSEY BLEIL; CHARLES E. HALDEMAN, JR.; JEROME H. BAILEY; GARY D. FORSEE; and the DST SYSTEMS, INC. 401(K) PROFIT SHARING PLAN,

Defendants.

Civil Action No.  
19-CV-09302-ALC-BCM

**JOINT STIPULATION OF  
SETTLEMENT AND RELEASE OF  
CLAIMS**

**JOINT STIPULATION OF SETTLEMENT AND RELEASE OF CLAIMS**

1. Julie A. Su, Acting U.S. Secretary of Labor (the “Secretary”), hereby notifies the Court that she has entered the Settlement Agreement and Release appended as Exhibit 1 (“Settlement Agreement”) that, among other things, resolves the claims in this action subject to the terms of the Settlement Agreement and Court approval of the Settlement Agreement in the actions captioned *Ferguson v. Ruane, Cunniff & Goldfarb Inc.*, No. 17-cv-06685 (S.D.N.Y.), and *Ferguson, et al. v. Goldfarb*, Case No. 1:20-cv-07092 (S.D.N.Y.), in which the Settlement

Agreement is being filed concurrently, and subject to the terms of this Joint Stipulation of Settlement and Release of Claims (the “Joint Stipulation”).

2. The Secretary and the Defendants in this action (“Defendants”)<sup>1</sup> hereby stipulate and agree that, as of, but no earlier than, the Effective Date of Settlement,<sup>2</sup> and in consideration of the promises, covenants and agreements described in the Settlement Agreement, the Secretary’s claims and action against the Defendants shall be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a), with each party to bear its own attorney’s fees and costs.

3. Subject to Sections 4.11 and 14 of the Settlement Agreement, upon the Effective Date of Settlement, the Secretary absolutely and unconditionally releases and forever discharges the *Su* Defendant Releasees<sup>3</sup> from any and all Claims against any of the *Su* Defendant Releasees that the Secretary directly, indirectly, derivatively or in any other capacity ever had or now has against any of the *Su* Defendant Releasees that (i) arise out of or in any way relate to the investment of assets in the DST Systems, Inc. 401(k) Profit Sharing Plan (the “Plan”) through Ruane, Cunniff

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<sup>1</sup> Defendants in this action are Ruane, Cunniff & Goldfarb Inc.; DST Systems, Inc.; Robert D. Goldfarb; the Advisory Committee of the DST Systems, Inc. 401(k) Profit Sharing Plan; the Compensation Committee of the Board of Directors of DST Systems, Inc.; Kenneth V. Hager; Randall D. Young; Gregg W. Givens; Gerard M. Lavin; M. Elizabeth Sweetman; Douglas W. Tapp; George L. Argyros; Lawrence M. Higby; Travis E. Reed; Lowell L. Bryan, Samuel G. Liss; Brent L. Law; Lynn Dorsey Bleil; Charles E. Haldeman, Jr.; Jerome H. Bailey; and Gary D. Forsee.

<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Settlement Agreement. To the extent there is any conflict between the defined terms in this Joint Stipulation and the Settlement Agreement, the terms of the Joint Stipulation shall control. For clarity, any Defendant in this action who is not signing the Settlement Agreement shall have no obligations under the Settlement Agreement but only under this Joint Stipulation.

<sup>3</sup> “*Su* Defendant Releasees” means the Defendants, as defined in footnote 1, and any and all of their respective related parties or entities, including, without limitation, any and all members of their immediate families, their respective agents or other persons acting on their behalf at any time, their respective current or former officers, Board members, employees, attorneys, advisors, financial advisors, insurers, accountants, assigns, creditors, heirs, estates and legal representatives.

& Goldfarb Inc. or any action or inaction with respect to establishing a written investment policy for the Plan or (ii) were or could have been asserted in this action.

4. Subject to Section 14 of the Settlement Agreement, upon the Effective Date of Settlement, each of the Defendants in this action releases any and all Claims against the Secretary relating to the investigation or litigation of the claims in this action, including claims under the Equal Access to Justice Act, 5 U.S.C. § 504.

5. Defendant Release. Subject to Section 14 of the Settlement Agreement, upon the Effective Date of Settlement, each of the Defendants in this action absolutely and unconditionally releases and forever discharges each of the *Su* Defendant Releasees from any and all actual or potential Claims whenever accruing, whether brought in an individual, representative or any other capacity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, arising out of or in any way related to: (i) any fact alleged in the Complaint and any prior or subsequent pleading or legal memorandum filed in the Action; (ii) any fact alleged in a complaint or demand filed in any Related Proceeding or Arbitration and any subsequent pleading or legal memorandum filed in any Related Proceeding or Arbitration; (iii) the Plan (including, without limitation, the selection, retention and monitoring of Plan investments; any action or inaction by any Plan fiduciary; or the performance, fees and any other characteristic of the Plan), through the date the Court enters the Final Approval Order and Judgment; (iv) the subject matter of or the proceedings in this Action, any Related Proceeding, or any Arbitration; and (v) the approval of the Independent Fiduciary of the Settlement, except that the *Su* DST Individual Defendants do not release any Claims for advancement or indemnification against DST for reasonable attorney's fees, expenses, or costs to which they may otherwise be entitled.

6. Covenant Not to Sue by Defendants. Subject to Section 14 of the Settlement Agreement, each of the Defendants in this action covenant and agree: (a) not to file against any of the *Su* Defendant Releasees any of the Claims released by paragraph 5 of this Joint Stipulation; and (b) that the foregoing covenant and agreement shall be a complete defense to any such Claims released by paragraph 5 of this Joint Stipulation against any of the *Su* Defendant Releasees.

7. Reasonably promptly after the signing of the Settlement Agreement, the Secretary and the Defendants shall use their best efforts to obtain from the Court a stay of the *Su* Action pending the Court's decision as to whether preliminarily and finally to approve the Settlement. The Secretary and the Defendants shall not seek discovery in the *Su* Action except for the purposes of seeking Court approval of the Settlement Agreement.

8. The Secretary and the Defendants each represent and warrant that they are voluntarily entering into this Joint Stipulation as a result of arm's-length negotiations among their counsel; in executing this Joint Stipulation they are relying solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof; they are not relying upon and have not been influenced to any extent whatsoever in executing this Joint Stipulation by any representations, statements or omissions pertaining to any of the foregoing matters by any other Settling Party or its representatives, or by the Secretary or Defendants; they knowingly waive any claim that this Joint Stipulation was induced by any misrepresentation or nondisclosure; and the Secretary and each Defendant assumes the risk of mistake as to facts or law.

9. The Secretary and the Defendants each represent and warrant that they have carefully read the contents of this Joint Stipulation; they have made such investigation of the facts

pertaining to Joint Stipulation and all of the matters pertaining thereto as they deem necessary; and this Joint Stipulation is signed freely by each Person executing this Joint Stipulation of Settlement and Release of Claims on behalf of the Secretary and each Defendant.

10. Each individual executing this Joint Stipulation on behalf of any other Person does hereby personally represent and warrant to the other Defendants and the Secretary that he or she has the authority to execute this Joint Stipulation on behalf of, and fully bind as to any applicable provisions, each principal that such individual represents or purports to represent.

11. The Secretary and the Defendants understand and agree that this Joint Stipulation and the Settlement Agreement embody a compromise and settlement of disputed claims, and that nothing in this Joint Stipulation or the Settlement Agreement, including the furnishing of consideration for the Settlement Agreement, or the fact or terms of the Settlement Agreement, shall be treated as an admission or denial or offered, introduced, or otherwise used in any action or proceeding for any purpose, except to enforce this Joint Stipulation or the Settlement Agreement and/or the Final Approval Order, including, without limitation, the Permanent Injunction contained therein.

12. The Secretary and the Defendants agree not to take any action inconsistent with obtaining Court approval of the Settlement Agreement.

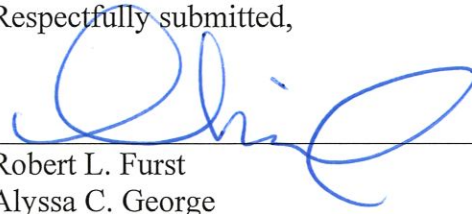
13. If the Settlement Agreement is terminated and rendered null and void for any reason, including any of the reasons stated in Section 14 of the Settlement Agreement, the following shall occur. (i) This Joint Stipulation shall automatically terminate, and thereupon become null and void. (ii) The Secretary and the Defendants shall move the Court to lift any stay entered in this action, and this action shall for all purposes with respect to the Secretary and the

Defendants revert to its status as of October 31, 2022. (iii) All Releases given or executed pursuant to this Joint Stipulation shall be null and void.

14. The parties to this action stipulate and agree that the Court will retain continuing and exclusive jurisdiction to resolve any matter arising out of or relating to this Joint Stipulation.

15. This Joint Stipulation may be executed by exchange of faxed or scanned executed signature pages, and any signature transmitted by facsimile or by email attachment for the purpose of executing this Joint Stipulation shall be deemed an original signature for purposes of this Joint Stipulation. This Joint Stipulation may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

Respectfully submitted,



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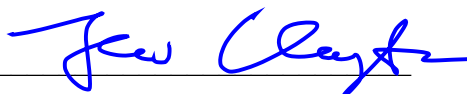
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Attorneys for the Secretary

Dated: July 14, 2023



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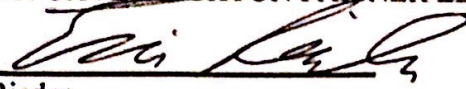


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Dated: 7/14/2023

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**Dated: 7/14/23**

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Dated: July 14, 2023

PROSKAUER ROSE LLP

A handwritten signature in black ink, appearing to read "Myron D. Rumeld". The signature is written in a cursive style with a horizontal line underneath it.

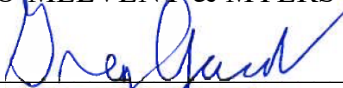
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Dated: July 14, 2023

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Attorney for Ruane, Cunniff & Goldfarb Inc.

Dated: July 14, 2023

# EXHIBIT G

**Individuals Excluded from Settlement Class**

George L. Argyros  
Tim Bahr  
Jerome H. Bailey  
Lynn Dorsey Bleil  
Lowell L. Bryan  
Ned Burke  
John Clark  
Michael G. Fitt  
Gary D. Forsee  
Steve Gebben  
Gregg W. Givens  
Kenneth V. Hager  
Charles E. Haldeman, Jr.  
Lawrence M. Higby  
Stephen Hooley  
Joan Horan  
Robert T. Jackson  
Gerard M. Lavin  
Brent L. Law  
Samuel G. Liss  
Thomas McDonnell  
Jude Metcalfe  
William C. Nelson  
Travis E. Reed  
M. Jeannine Strandjord  
M. Elizabeth Sweetman  
Doug Tapp  
Randall D. Young